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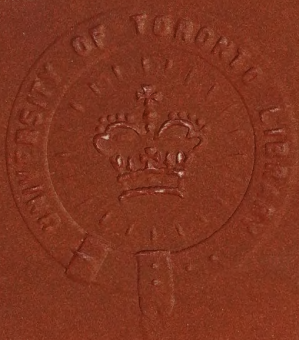
Audit office guide.

OFFICE OF
THE AUDITOR GENERAL
CANADA

AUDIT OFFICE GUIDE



COMPILED FOR INFORMATION
AND GUIDANCE IN THE
AUDIT OF ACCOUNTS

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INTRODUCTION

Performance of the parliamentary audit presents special problems due to the extent to which administration of government is regulated by constitutional usages, statutes and Executive practices.

The Guide's text is founded on Audit Office experience but many points are buttressed by quotations from textbook writers, proceedings of Public Accounts Committees and judgments of courts. With respect to the last, selection has been influenced by the aptness of the quotation in relation to the point discussed, rather than by the significance that a case may enjoy in other respects. This is the reason why use is made of decisions of courts of various countries. It is therefore emphasized that the quotations are simply to clarify Office evaluations. The interpretation of the law is the function of law officers.

Textbooks referred to are in the Office library and are available to all members of the staff. No quotations are made from the Treasury Manual although it contains a wealth of helpful information. The reason is that it is expected that all members of the Audit Office are familiar with its contents.

The statute of chief concern is the Financial Administration Act. It will be referred to throughout the Guide as the "FA Act".

Watson Sellar.

Ottawa, 1954.

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THE AUDIT OFFICE

1. Application of the principles of responsible government necessitates that Parliament control the public purse; consequently, it is ever of concern to the House of Commons that its fiscal decisions are, in the words of Chubb, "carried out accurately, faithfully and efficiently". The Audit Office exists to observe whether that is done. The Auditor General enjoys no statutory power to surcharge or disallow, nor may he dictate to departments. That was quickly established after the first Consolidated Revenue and Audit Act was enacted in 1878, an extract from the opinion of the law officers being:

> Parliament never intended to make you the judge in the first instance of the validity of all the executive acts of the Crown. It must be remembered that the Government is responsible to Parliament and to the people for their acts. It is for them to satisfy Parliament and the people that they did not exceed their authority, or to justify any excess of authority on their part, and when necessary to ask Parliament to confirm their actions. Once it were admitted that the Government had to satisfy the Auditor General, or any other person outside of Parliament, as to legal validity of any proposed action on their part before such action could be taken, it is not difficult to imagine that the consequences might be disastrous. (Printed in Audit Report for 1879)

2. ***Relationships with Departments.***—A successful audit requires the co-operation of administrative staffs; therefore, auditors should conduct themselves in a way that elicits good will and assistance, at the same time bearing in mind that, as they are performing a public duty, they must exercise due care and let the chips fall where they may. Montgomery once observed that:

> The general rule of the common law, that all men are considered honest until proved dishonest, may be observed by an auditor . . . but he is charged with an exceptional degree of diligence in recognizing indications of dishonesty on the part of those who occupy responsible positions. ("Auditing Theory and Practice", p. 630.)

Fortunately, cases of dishonesty rarely arise in the administration of the affairs of the Government of Canada. The quotation is, however, useful to emphasize that great care must be taken to make certain that financial directions of Parliament are respected. An auditor would fail in the performance of his

duty were he to permit himself to be motivated by compassion and pass a transaction because of the plight of some person were a statutory direction strictly applied.

3. The statutory obligation is to make a post-audit, so it is undesirable that an auditor voluntarily undertake to pre-audit any account; but, on invitation, audit officers should willingly participate in discussions respecting procedures, etc. It is, of course, to be borne in mind that the status is advisory because the Office has not a statutory power either to insist that action be along certain lines or to assume responsibility for a decision for which a Minister is ultimately answerable to Parliament. The day is long gone when Commonwealth Audit Offices held departments at arm's length—a common interest now exists to make certain, and with a minimum of duplicating effort, that all financial transactions are efficiently controlled.

4. An audit officer cannot expect to receive administrative co-operation unless he regards the good name of a department as something he should strive to maintain. Moreover, the Canadian people expect that parliamentary directions be observed in raising and spending money for public purposes. An auditor would poorly serve the best interests of the Audit Office were he to assume that its repute is dependent on a lengthy report to the House of Commons. It is in the public interest that, wherever possible, immediate corrective action be taken with respect to any irregular financial transaction; therefore, when one is observed, departmental or Treasury attention should be drawn to it forthwith.

5. ***Access to Information.***—Audit work is directed by several supervisors of audit, but the Office is organized as a single unit. Economy is a reason, but a more important one is to make certain that promotion prospects are not retarded by staff becoming specialists on a particular type of accounts. In the course of a year, it may therefore happen that an auditor goes from one audit to another and experiences divergent departmental viewpoints with respect to the application of section 66 (1) of the FA Act:

> Notwithstanding any Act, the Auditor General is entitled to free access at all convenient times to all files, documents and other records relating to the accounts of every department, and he is also entitled to require and receive from members of the public service such information, reports and explanations as he may deem necessary for the proper performance of his duties.

6. The Auditor General is an officer of Parliament, so the purpose of this enactment is to make certain that he has opportunity to consider all relevant facts during the audit. The marking of a document or file as 'confidential' or 'secret' is no bar to audit scrutiny. On the other hand, Parliament also recognizes that it is in the public interest that departments safeguard certain categories of information, so subsection 3 of section 66 stipulates that:

> The Auditor General shall require every person employed in his office who is to examine the accounts of a department pursuant to this Act to comply with any security requirements applicable to, and to take any oath of secrecy required to be taken by persons employed in that department.

7. While audit officers have a statutory right of access to files, they may exercise the power only when the file is regarded as necessary in the performance of the audit. Section 66 may not be utilized to satisfy personal curiosity, nor for obtaining a file which has no relationship to the audit. Again, "free access" is qualified by the words "at all convenient times". These indicate a right to inspect rather than to retain files for an indefinite period of time.

8. Situations sometimes arise where a department treats certain information as confidential but has no special security requirements. What is the obligation on an audit officer? He should, as far as is practicable, adhere to practices applicable when an oath is taken. That is to say, he should try to plan the examination and his notes in such a way that it is unnecessary to make copies or extracts from any documents which the department regards as subject to special security treatment; if he finds it necessary to copy any of the material, it should be kept on a confidential file and destroyed as soon as the audit purpose is served.

9. ***The Right to Conduct an Inquiry.***—There has long existed an enactment permitting the Auditor General to examine on oath. The wording has varied from time to time, the current text being section 74 of the FA Act:

> The Auditor General may examine any person on oath on any matter pertaining to any account subject to audit by him and for the purposes of any such examination the Auditor General may exercise all the powers of a commissioner under Part I of the Inquiries Act.

The Interpretation Act defines "person" as including any body corporate. The power given by the section has rarely been exercised and on more than one occasion during the past fifty years Auditors General have declined to employ it when requested so to do by departments. It is a power to be exercised only in extraordinary circumstances and should never be used as a 'big stick' in order to secure information.

10. ***Responsibility for Financial Transactions.***—An auditor has to distinguish between the statutory responsibilities of the Comptroller of the Treasury and those of departments. The collecting of public money and the administration of Revenue statutes are always responsibilities of some Minister, who may, by section 15 of the FA Act, arrange that the Comptroller "provide accounting and other services"; but what is here contemplated refers to the routine after moneys are received. Should it be that, for one reason or another, Treasury officers perform collecting services, the status is that of an agent for the department. On the other hand, should a loss be sustained after money comes into the hands of Treasury, or an error be made in accounting, the Comptroller is to be regarded as answerable.

11. In the case of expenditures, section 31(1) of the FA Act is precise:

> No charge shall be made against an appropriation except upon the requisition of the appropriate Minister of the department for which the appropriation was made, or by a person authorized by him in writing.

Departments alone may authorize charges and, in turn, are answerable for the 'merit' of expenditures. The statutory duty on the Comptroller of the Treasury is to reject a requisition for a cheque if payment

(*a*) would not be a lawful charge against the appropriation,

(*b*) would result in an expenditure in excess of the appropriation, or

(*c*) would reduce the balance available in the appropriation so that it would not be sufficient to meet the commitments charged against it.

However, the department has a right of appeal to Treasury Board. (In similar circumstances, an appeal with respect to a charge to a Senate, House or Library of Parliament vote is to

the appropriate parliamentary committee.) Thus, an aim of section 31 is to make decision as to uses of a vote a departmental responsibility, and to make the Comptroller of the Treasury answerable for the regularity of charges. The provision for appeals from his decision is to safeguard against an abuse of power. In the event that he is overridden, this does not affect audit evaluation of the transaction, because the appeal provision is only a procedural step in the spending process.

12. A new enactment is section 31(7). It reads:

> Where, in respect of any contract under which a cost audit is required to be made, the Comptroller reports that any costs or charges claimed by the contractor should not in the opinion of the Comptroller be allowed, such costs or charges shall not be allowed to the contractor unless the Treasury Board otherwise directs.

Normally, cost audits are made by staff of the Comptroller of the Treasury, but there is no statute imperatively directing that he alone make them. Consequently, a presumption is that the Comptroller may intervene even if someone else made the cost audit; also, that any certificate given by a Treasury cost auditor is likewise provisional until confirmed by the department, the Comptroller and, where applicable, Treasury Board. For these reasons, an audit duty is to scrutinize findings of those who made a cost audit, and also to review any subsequent decisions of the Comptroller and Treasury Board.

13. ***The Audit Task.***—The audit required goes far beyond the mere checking of vouchers against entries in the accounts. Section 67 of the FA Act requires that examinations be of a nature to permit an opinion being formed not only that accounts are faithfully and properly kept, but also whether:

(1) all public money has been fully accounted for, and the rules and procedures applied are sufficient to secure an effective check on the assessment, collection and proper allocation of the revenue,

(2) money has been expended for the purposes for which it was appropriated by Parliament, and the expenditures have been made as authorized, and

(3) essential records are maintained and the rules and procedures applied are sufficient to safeguard and control public property.

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14. The Revenue direction does not extend to non-governmental records; the obligation is to observe that governmental accounts of assessment and collection have been properly kept, collections deposited promptly, and that there was no fraud, laxity or partiality in the assessing and collecting process. In the audit, neither a departmental decision nor an Executive order may be automatically accepted; a duty exists to make certain that the exercise of authority was in the manner required by a statute or usage.

15. In Expenditure audits, the accounting efficiency in Treasury offices is of particular concern because of the statutory functions of the Comptroller, including issue of cheques, and also because he performs internal audit functions. Steps should also be taken to establish whether inspection and internal audit services function effectively and may be relied upon. The utility of an internal auditor's report is influenced by the degree of his independence from the officers in charge of accounts he examines. Certain elements should be present before the Audit Office takes notice of his work. It may not cover all services of a department, but within its field it should be comprehensive in its range and wide enough to cover the checking of all classes of income and outgo from primary to final entries in the appropriate books. Moreover, the staff should be disassociated entirely from any work which is, or could be, subject to audit, and they should be organized in such a way that their position is recognized as being a part of the machinery for exercising financial control.

16. The internal audit is ordinarily associated with certain types of transactions only, therefore the parliamentary audit must be planned to bridge gaps. Regardless of whether a department has an internal audit service, Audit Office examinations should establish that there is in application a system so planned that one officer's work is a check on the work of another. Whenever the accounting unit is small and does not permit independent check practices, Audit Office examinations of transactions should not be restricted to limited tests.

17. ***Audit Notes.***—Throughout the year, supervisors of audit accumulate notes developed by examiners for consideration when the annual Report is prepared. A good audit note is concise and lists all pertinent facts, because rarely will the examiner be present when the note is reviewed to decide whether the transaction calls for Report reference. The direc-

tion is to report on the accounts of a completed year, but sometimes it is expected that attention be drawn to later transactions. Therefore, audit notes should include up-to-date information, although relating to events after the accounting period, whenever that is necessary in order to outline fully a transaction of audit concern. It is also to be borne in mind that a special situation may occasionally justify inclusion in the Report to the House of a reference to a transaction in the current year. Recently, when the Auditor General of South Africa was asked by a member of the Public Accounts Committee why he did not wait until the year was ended to report a special case, his reply was:

> . . . the audit which my Department carries out is a continuous one, and it has always been the custom, when an important point of principle arises, to report it immediately. The object is to get the matter settled and to bring the point of principle to notice at the earliest opportunity.

and the Committee accepted the matter as one properly before it.

18. Auditors should regard the foregoing as equally applicable to notes developed in the course of audits of Crown corporations, where the duty is to make a report to a Minister as public shareholder. Section 87 of the FA Act requires that the audit report be included in the annual report of the corporation to be tabled, so the following extract from "The Accountant" of August 30, 1952, is appropriate, although the writer was discussing the obligations on an auditor of a commercial concern:

> Extraordinary and unusual events which happen after the close of the period, even though they are not directly related to the period just ended, should be called to the attention of the reader of the financial statements if they are of material importance. An event is said to be of material importance if the normal reader of the statements will act in one way if he knows about the happening of the event but will act differently if he does not know of it.

19. ***Audit Reports.***—With respect to the accounts of Canada, the Auditor General is required (section 70, FA Act) to "call attention to every case in which he has observed" that

(*a*) any officer or employee has wilfully or negligently omitted to collect or receive any money belonging to Canada,

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(*b*) any public money was not duly accounted for and paid into the Consolidated Revenue Fund,

(*c*) any appropriation was exceeded or was applied to a purpose or in a manner not authorized by Parliament,

(*d*) an expenditure was not authorized or was not properly vouched or certified,

(*e*) there has been a deficiency or loss through the fraud, default or mistake of any person, or

(*f*) a special warrant authorized the payment of any money,

while with respect to Crown corporations the obligation (section 87) is to report whether, in his opinion

(*a*) proper books of account were maintained;

(*b*) financial statements were prepared on a basis consistent with that of the previous year;

(*c*) the balance sheet and the statement of income and expense give a true and fair view; and

(*d*) all transactions observed have been within the statutory powers of the corporation.

All of the foregoing are obligatory subjects to be reported, therefore auditors as a matter of course prepare audit notes with respect to them.

20. It is the direction in section 70 (and repeated in comparable language in section 87) that the Auditor General also report on any other case he

considers should be brought to the notice of the House of Commons

that presents the problem. Notice has necessarily to be taken of the fact that parliamentary committees have not the time to examine minutely the Accounts, therefore practice throughout the Commonwealth is to concentrate on points of principle. A good description of what a report should contain was once given by the Comptroller and Auditor General of Great Britain:

I am a parliamentary officer whose duty it is not only to certify to the correctness of the accounts, as rendered, but, further, I am directed to report to Parliament. As regards reporting, I conceive

I have something of a free hand. There are some points which I am obviously to report—such as any excess over a grant of Parliament, any clear irregularity, and so forth; but I have also a duty to report on the accounts, and availing myself of that opportunity I think it my duty to report anything which in my judgment, falling within my proper functions, it concerns the House of Commons to know. In the first instance, my object is to report in such a way as to assist the House of Commons in making its way through what may be a very bulky volume of accounts; but beyond that I do not feel myself debarred from calling attention to anything which has occurred in the course of my audit during the year which indicates loss or waste, or anything of that kind, which I think it is well that Parliament should know. Of course, in doing so, I have to act with great care and discretion. It is not for me to criticize administrative action as such; the departments are responsible for their own actions as regards general administration; but if I find the result of administrative action has been a loss or a wastefulness of public money, then I think it is not going beyond my duty of reporting, as an officer of the House of Commons, if I call specific attention to matters of that kind, even though the account itself would not disclose the facts.

The responsibility is on the Auditor General to decide what is to be drawn to the notice of Parliament, but he can efficiently discharge this obligation only when auditors report everything that they regard as of significance. Absolute accuracy and fair statement are imperative because the obligation is to call attention to the facts, not to pass judgment.

21. *Certifying Financial Statements.*—Section 69 of the FA Act requires the Auditor General to certify those financial statements which are, by section 64, directed to be included in the Public Accounts. A similar direction is given in section 87 with respect to the statements of those Crown corporations which are subject to audit by the Audit Office.

22. In certifying statements, the Auditor General has to consider whether they give a true and fair view of the financial position. The obligation is not lessened by the fact that section 64 states that the statement of assets and liabilities is to consist

> of such of the assets and liabilities of Canada as in the opinion of the Minister are required to show the financial position of Canada as at the termination of the fiscal year.

nor that section 85 vests in the Minister of Finance and the "appropriate Minister" power to give Crown corporations directions as to the form of their various statements. When the Auditor General reports on accounts, he is required to "call

attention" to transactions, but when he signs a financial statement he "certifies" as to its accuracy. The parallel now given to emphasize the distinction is taken from Lord Denning's dissent judgment in *Candler* v. *Crane Christmas* & *Co.*:

> I think the law would fail to serve the best interests of the community if it should hold that accountants and auditors owe a duty to no one but their client. . . . It would encourage accountants to accept . . . information . . . without verifying it, and to prepare and present the accounts rather as a lawyer prepares and presents a case, putting the best appearance on the accounts they can without expressing their personal opinion of them. This is, to my way of thinking, an entirely wrong approach. There is a great difference between the lawyer and the accountant. The lawyer is never called on to express his personal belief in the truth of his client's case, whereas the accountant, who certifies the accounts of his client, is always called on to express his personal opinion whether the accounts exhibit a true and correct view of his client's affairs, and he is required to do this, not so much for the satisfaction of his own client, but more for the guidance of shareholders, investors, revenue authorities, and others who may have to rely on the accounts in serious matters of business.

SOURCES OF AUTHORITY

23. Government is carried on in the name of the Queen as head of the State, but government is by an Executive answerable to and dependent upon Parliament for continuance of office. A Bill was once before the British Parliament to establish an office under the Crown. It was suggested that the House should approve the appointment. Mr. Gladstone rejected the proposal on the ground that, were the legislation so to provide, the House would circumscribe its freedom to criticize either the person appointed or the Government: "the function of Parliament is to legislate, the task of administration is Executive, with some Minister of the Government answerable to Parliament for every act performed in the name of the Crown."

24. ***The Prerogative.***—The Statute Law books are thick. but the most fundamental part of the Law is still Common Law—the rules of conduct developed and universally accepted down through the ages in order to promote the common welfare. As Geldart remarks:

> If all the statutes of the realm were repealed, we should still have a system of law, though, it may be, an unworkable one; if we could imagine the Common Law swept away and the Statute Law preserved, we should have only disjointed rules torn from their context, and no provision at all for many of the most important relations of life. ("Elements of English Law", p. 11.)

The levy of taxes and the making of public expenditures are, of course, subjects regulated by statutes. Consequently, a parliamentary auditor's interest in the common law is limited to a few instances where action stems from the exercise of royal prerogatives emanating from the Common Law. By exercise of the prerogative the Prime Minister (but not Ministers) is appointed and Parliament is summoned. The grant of commissions to Service forces officers and the disposition of forces are applications of prerogative powers reserved to the Queen by section 15 of the B.N.A. Act. Sometimes an audit officer may wonder why a fine is remitted by action of the Secretary of State rather than by use of section 22 of the FA Act. The Queen enjoys a prerogative power to pardon convicted offenders and to remit or reduce sentences. When she does so, her will is made known through the Secretary of State. The exercise is

really judicial and follows final adjudication by the courts. A remission under section 22 of the FA Act may take place at any time, but when made under that authority and the sum exceeds $1,000, it is to be reported to the House of Commons because subsection 8 so requires. If a statute provides for remissions and does not direct that they be reported to the House—section 75 of the Fisheries Act is an example—there is now no obligation to report.

25. The foregoing samples of prerogative acts are given to illustrate; what is important in the audit is to make certain that a prerogative power be not claimed in a field which Parliament has absorbed into its jurisdiction. For example, at one time the Crown claimed a prerogative right to ignore legislation, but the 1689 Bill of Rights erased that part of the prerogative by declaring:

> That the pretended power of suspending of laws or the execution of laws by regal authority without consent of Parliament is illegal.

A practical illustration of application is in the tax field. No tax collector may give an undertaking which relieves a taxpayer from a levy fixed by Parliament. *Woon* v. *Minister of National Revenue* puts it this way:

> Parliament has said that under certain circumstances certain things are deemed to be dividends and manifestly the commissioner of taxation has no power to declare otherwise or to settle the limit of taxation.

26. ***Parliamentary Debates and Resolutions.***—It is a duty on senior audit officers to read parliamentary debates and to maintain file references with respect to those relating to finance. Amendments made to Bills during passage should be noted in order that the significance of a change is not lost in application. Explanations and undertakings given by Ministers when money votes are under consideration should be referenced because subsequent transactions should be in harmony. In other words, a verbal undertaking by a responsible Minister may narrow the application of a vote because the Government is morally committed to act in a certain way. Statements by other Members are not, of course, of audit concern because they are not spokesmen for the Executive.

27. Sometimes an auditor has to consider what is the effect of a resolution adopted by either or both Houses. Does it alter the law? The Parliament of Canada consists of "the Queen,

an upper house styled the Senate and the House of Commons" (section 17 of the B.N.A. Act), consequently a resolution of either House has not the same effect as an Act of Parliament. The situation still is as was said in *Stockdale* v. *Hansard* over one hundred years ago:

> The House of Commons is not the Parliament, but only a coordinate and component part of the Parliament. That Sovereign power (Parliament) can make and unmake the laws; but the concurrence of the three legislative estates is necessary; the resolution of any one of them cannot alter the law, or place any one beyond its control.

28. Most frequently, the problem presents itself in connection with budget resolutions. A budget speech may announce that tariff and tax changes will take effect immediately, or on a stated date. If, for example, a rate is to be increased, it is self-evident that the Revenue will suffer if immediate effect is not given. Conversely, business may be dislocated and hardships suffered if early benefits of a proposed reduction are not extended. However, application, not policy, is under audit. Even after a budget resolution is approved by the House it is without effect in law. An extract from *Bowles* v. *Bank of England* explains:

> Does a resolution of the Committee of the House of Commons for Ways and Means, either alone or when adopted by the House, authorize the Crown to levy on the subject an income tax assented to by such resolution but not yet imposed by Act of Parliament? . . . this question can, in my opinion, only be answered in the negative. By the statute . . . usually known as the Bill of Rights, it was finally settled that there could be no taxation in this country except under authority of an Act of Parliament. The Bill of Rights still remains unrepealed, and no practice or custom however prolonged or however acquiesced in on the part of the subject can be relied on by the Crown as justifying any infringement of its provisions. It follows that, with regard to the powers of the Crown to levy taxation, no resolution, either of the Committee for Ways and Means or of the House itself, has any legal effect whatever. Such resolutions are necessitated by a parliamentary procedure adopted with a view to the protection of the subject against the hasty imposition of taxes, and it would be strange to find them relied on as justifying the Crown in levying a tax before such a tax is actually imposed by Act of Parliament.

The British Parliament thereupon enacted the Provisional Collection of Taxes Act of 1913 which permits limited application being given to Ways and Means resolutions. Canada has no like legislation, therefore our taxing Acts state the date from which

new rates take effect. Consequently, tax collectors generally qualify receipts given so that, should the proposed new rate not be confirmed by legislation, adjustments may be made with taxpayers. But regardless of the text of a receipt, a taxpayer is liable for the tax legally applicable at the time of the transaction. If legislation confirms the new basis, that automatically gives sanction to what a collector has done. Should the Minister of Finance's proposal be varied, the rate applicable is that actually fixed by the legislation. The fact that the effective date antedates day of assent is without significance. Section IX of the Constitution of the United States prohibits retrospective legislation, but no like prohibition is in the B.N.A. Act.

29. *Date When Statutes Take Effect.*—Section 7 of the Interpretation Act directs that the Clerk of the Parliaments (the Clerk of the Senate) shall endorse on every Act, immediately after the title thereof, the day, month and year when the Act was assented to in Her Majesty's name, and that

> such endorsement shall be taken to be a part of the Act, and the date of such assent shall be the date of the commencement of the Act, if no other commencement is therein provided.

Sometimes a statute is to become operative on a future date. The postponement generally is to permit an administrative organization to be assembled. In that event, section 12 of the Interpretation Act is of audit interest. In part, it reads:

> Where an Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment . . . that power may . . . so far as may be necessary or expedient for the purpose of making the Act effective at the date of the commencement thereof, be exercised at any time after the passing of the Act . . .

30. *Repeal of a Statute.*—If a statute be repealed, that does not affect previous operation nor any right or liability acquired or incurred. The authority is section 19 of the Interpretation Act, which also provides that when new legislation is substituted (an example is the FA Act in place of the Consolidated Revenue and Audit Act), unless the contrary intention appears, all officers appointed under the repealed statute continue to act as if appointed under the provisions of the new legislation.

31. *Rules and Regulations.*—Modern practice is to declare principles in statutes and to delegate a power, generally to the Governor in Council, to make regulations with respect to

matters relating to application. The statute may provide that regulations made under its authority 'shall' be published in the Canada Gazette. Generally, this is regarded as a 'directory' provision, and in that event failure to publish does not invalidate. However, section 6 of the Regulations Act provides that

> no person shall be convicted for an offence consisting of a contravention of any regulation that was not published in the Canada Gazette

unless (*a*) a regulation under the Regulations Act removed the obligation to publish, or (*b*) by other means those likely to be affected by it had notice of the "purport of the regulation". The Regulations Act gives the word 'regulation' an all-embracing meaning, but sometimes Acts of Parliament use the phrase 'rules and regulations' and an auditor may wonder what is the distinction; consequently, a quotation from Russell's "Legislative Drafting and Forms" may be of interest:

> As regards the use of the words 'rules' or 'regulations', there has always been great variation in practice. . . . Considerable confusion is caused by the indiscriminate use of these terms, and it is desirable that a uniform practice should be adopted. It is suggested, therefore, that 'rules' should be used for subsidiary legislation dealing with procedure and 'regulations' for subsidiary legislation of a general nature. (p. 76)

In other words, directions with respect to procedure are 'rules' while substantive directions are 'regulations'. That appears to be the test because the Governor in Council, for example, may issue both 'rules' and 'regulations'. The audit concern is not in the title given but in the authority to make and the directions thereby given.

32. Rarely is it a matter of audit concern whether regulations made will successfully stand judicial review; ordinarily the audit concern is a failure to adhere or a lack of authority to make an exception. When a consequence of non-observance of a regulation is a transaction which affects Consolidated Revenue Fund, an audit note should be made. In the event that the regulation was made by the Governor in Council, a presumption is that neither Treasury Board nor a department has power to make an exception from its application; moreover, the Governor in Council ordinarily is to be regarded, for report purposes, as not enjoying a power to make an exception without amending the regulations. However, if an Act gives the Governor in Council power to make both 'orders' and

'regulations', an exception may be effected by use of an order. To illustrate, the Dominion Lands Act of 1908 delegated a power to make orders and regulations, and in *Atty. General for Alberta* v. *Huggard Assets Ltd.*, the Judicial Committee of the Privy Council considered the effect:

> . . . it may be pertinent to ask for what reason the Acts of 1886 and 1908 provide that some things could be done by regulations and some by order. That this was done deliberately admits of no doubt. The only question is "why?" Their Lordships can only suppose the explanation to be that a regulation normally (though perhaps not quite necessarily) applies uniform treatment to everyone or to all members of some group or class. There is one and the same 'rule' ('*regula*') for all. On the other hand, there may be special cases which the rule did not contemplate ('*casus omissi*' are expressly instanced in the Acts) or to which, owing to special circumstances, it cannot apply without hardship, or without violating the spirit—'the true intent'—of the Act; and the object of the 'order-making' power is to enable the Crown to make special and equitable provision *ad hoc* for such cases.

33. ***Executive Orders.***—Auditors will distinguish between regulations made under the authority of a statute and those that are Executive in origin. The travel regulations, for example, are Executive orders and, ordinarily, a breach is not a matter to report to the House of Commons. Should a breach of an Executive order be observed in the audit and it has financial consequences, the appropriate action is to draw the matter to the notice of the Minister of Finance (sections 72 and 73 of the FA Act). The Governor in Council and, in the absence of a direction to the contrary, Treasury Board may authorize that an exception be made from such an order; also, it may be assumed in the audit that, subject to his obligation to his colleagues, a Minister may give a direction in an exceptional case within the ambit but not specifically provided for. No official may be regarded as enjoying such a discretion.

34. ***Commitments of the Houses of Parliament.***—In the ordinary sense, Parliament is never a party to a contract and, if it takes notice of a contract, that does not necessarily restrict Executive action unless the parliamentary action is to legislate. The fact that Ontario has a single House gives emphasis to the illustration now given. In the 1890's a contract was negotiated which involved the use of prison labour, but it was agreed that the arrangement would become effective only after the Assembly approved, which it did by means of a resolution. When the effect of the resolution was later considered by the Court, the view taken was:

I entirely disagree with the view that the assent by the House of Assembly to the contract, or the resolution of the House ratifying the contract made the contract or gave to the contract the force of a statute of the Province. . . . It was simply an assent, not constitutionally necessary, I think—an assent by the Assembly to a contract which the Executive Government had entered into and had stipulated should not become operative until that assent had been obtained. (*Independent Cordage Company* v. *The King.*)

Of course, a resolution of either House with respect to its own affairs regulates any resulting financial transaction.

35. Persons with appropriate status as representing one of the Houses of Parliament may make contracts—for example, a committee may be empowered to retain counsel, engage experts, etc.; but no resulting agreement becomes an obligation of the Government. If for any reason the financial commitment is not honoured, the person concerned has no claim on Consolidated Revenue Fund. To illustrate, in 1891 the Committee on Privileges and Elections retained counsel and he engaged a resident of St. Catharines, Ontario, to act as an 'expert accountant'. The records do not disclose the reason why, but he was not paid. He proceeded by petition of right against the Crown for $580, representing salary and travel expenses. At trial, the Crown conceded that he might have performed services for the Committee but denied that he had performed any "for or on behalf of Her Majesty", and was upheld on the ground that, as the Crown could not enforce, terminate nor in any way interfere with the performance of the contract, it could not be regarded as a party to the agreement (*The Queen* v. *MacLean*). In other words, immediate recourse, if any, was against the person who had engaged him.

36. This decision was rendered over fifty years ago and, in view of changes which have since taken place—for example, the introduction of the Treasury commitment system—an auditor may wonder whether a distinction between departmental and Legislation votes still persists. It does. Section 31 of the FA Act vests in the Comptroller of the Treasury a power to question the legality or regularity of any proposed payment, but if the objection relates to an appropriation for the expenses of the Senate, House or Parliamentary Library, the decision is to be "in accordance with such procedure as may from time to time be prescribed by the Senate or the House of Commons as the case may be". An auditor of these accounts looks, in the case of the House, to the Internal Economy Commissioners—four

Members and the Speaker. In the case of the Senate, the decision is by its Committee on Internal Economy and Contingent Accounts.

37. ***Members of Parliament.***—Long ago it was accepted in England that parliamentary independence of the Crown was endangered so long as the Crown could, in effect, bribe Members by offers of office, contracts, etc. As the Crown could not be prohibited from making appointments, etc., a safeguard was devised by imposing penalties on Members if they offended "the independence of Parliament" and continued to sit in the House of Commons. Canada adopted the plan and the Act fixes a penalty of $200 a day. The sum is not payable to Consolidated Revenue Fund, instead:

> Such sum shall be recoverable from him by any person who sues for the same in any court of competent civil jurisdiction in Canada.

A general exception, of course, is where Parliament, by legislation, authorizes payments to Speakers, the Cabinet and Leaders of the Official Opposition, and Parliamentary Assistants.

38. A Senator or Member of Parliament may accept an "office, commission or employment" in the Executive Government so long as no "salary, fee, wages, allowance, emolument or profit of any kind" is attached thereto. This permits recouping of travel expenses, etc., whenever a public service is rendered on request. For example, there is no prohibition against a Member serving on a royal commission and being recouped his expenses; but there are precedents in Canadian practice against such payments when Parliament is in session and services are performed in Ottawa. The reasoning is: (*a*) Parliament has first claim on the Member's time, and (*b*) if the House is actively in session, it is the duty of the Member to attend—the Senate and House of Commons Act provides a scheme of deductions should he absent himself.

39. ***The Executive Government.***—The Crown makes known its will through orders of the Governor in Council. Actually, no governor general has attended meetings of the Council since the 1850's. The then Governor, Sir Edmund Head, gave as his reason that it was

> most inexpedient as a general rule that the governor should be present during the discussion in council of particular measures. He

is at liberty at all times to go into council and discuss any measures which he or the council think require it, but his presence as a regular and indispensable rule would check all freedom of debate and embarrass himself as well as his advisers. (March, 1858.)

However, no decision of the Council is effective until it has been brought to the notice of the Governor General and is approved. The Supreme Court of Canada once pointed out:

While His Majesty's representative cannot under the constitution act without the advice of a responsible minister or ministers, and while the decision in all questions of administration must ultimately rest with those who will be responsible, still the constitutional function of any particular minister or ministers of the Crown is to inform and advise and not to dictate. (Duff J. in *Norton* v. *Fulton*)

and in *Mackay* v. *Attorney General for British Columbia* is to be found:

There was some suggestion in argument that the transaction had the approval of the Cabinet, but there was no suggestion that it had the assent of, or had ever been brought to the notice of the Lieutenant-Governor so that it is not necessary here to consider whether a verbal Order in Council, something of which I have never heard, if proved, would have sustained the contract. In my opinion, the Legislature has clearly made it a condition to the acquisition of such lands as are in question that the decision of the Council should be signified in the customary way by minutes of council which should then be duly assented to by the Lieutenant-Governor, and that in the absence of such, the province should not be put under obligation to the party with whom the Minister purported to contract.

40. ***Distinction between the Cabinet and the Governor in Council.*** —Section 9 of the B.N.A. Act states that: "The executive government and authority of and over Canada is hereby declared to continue and be vested in the Queen". Section 11 declares that:

There shall be a council to aid and advise in the government of Canada, to be styled the Queen's Privy Council for Canada; and the persons who are to be members of that Council shall be from time to time chosen and summoned by the Governor General and sworn in as Privy Councillors, and members thereof may be from time to time removed by the Governor General.

The Council, as a body, is never summoned. Selected councillors as members of the committee known as the Governor in Council, administer the government. They subscribe to an oath which dates from 1257, a portion being:

You shall, in all things to be moved, treated and debated in Council faithfully and truly declare your mind and opinion accord-

ing to your heart and conscience; and you shall keep secret all matters committed and revealed unto you or that shall be treated of secretly in Council.

That is why an auditor is not entitled to ask what were the considerations which influenced the taking of a decision; he is, however, entitled to ask for a copy of the ministerial 'report to Council'.

41. There is a distinction between a meeting of the Cabinet and one of the Governor in Council. Strictly regarded, members of the Cabinet are counsellors of the Crown, selected to devise policies which will attract the support of Parliament. But as was remarked in the *Wooltops Case*:

> Ministers, nominally the selection of the Crown, are in fact the choice of Parliament, and preeminently of that branch of Parliament that chiefly controls the finances. To Parliament, Ministers are responsible; the strict theory of the constitution that Ministers are the servants only of the Crown gives way in actual practice to the acknowledged fact that they are really the executants of the parliamentary will, and must account to Parliament, and look for their authority to Parliament—authority express or tacit, arising from the confidence it gives to the administration. The theory that the Crown chooses its Ministers is overshadowed by the constitutional rule that it chooses only such as possess the confidence of Parliament; and the theory that Ministers execute the royal will accommodates itself to the fact that the royal will is to do what Parliament desires.

42. The Privy Council committee administering affairs of State and known as the Governor in Council consists of the same persons as constitute the Cabinet, but it is this Executive committee, not the Cabinet, that is responsible for the continuity of government. A Cabinet may fall but the committee continues as caretaker of government and adviser to the Queen until new advisers are selected. Thus, it is the orders of the Governor in Council that regulate the machinery of government. Transition from a meeting of Cabinet to one of the Governor in Council is signified by the use of an order in council to declare a decision. An order in council may be evidenced by:

(*a*) a copy of the *Canada Gazette* purporting to contain a copy of the Order;

(*b*) a copy of the Order purporting to be printed by the Queen's Printer; or

(*c*) a copy or abstract purporting to be certified to be true by the Clerk or assistant or acting Clerk of the Privy Council for Canada.

43. In the course of audit, it may be noted that a 'directive' indicates a decision with respect to a policy or expenditure. Is there an audit duty to take notice when the directive has not been strictly observed? The audit is of transactions recorded in the accounts. If a transaction requires a decision by the Governor in Council, a directive has not the same significance as an order in council because a directive does not involve participation by the Governor General while an order of the Governor in Council does. On the other hand, if the subject matter is not controlled by a statute, a directive may be equally efficient in regulating departmental practices. But regardless of the status of a directive, civil servants must respect it and, in the event of failure so to do, appropriate audit action is to inform the Auditor General, who will take such action as is expedient in the circumstances. Strictly regarded, a directive is not an official document, so may take such form and issue in such manner as the Prime Minister may decide. But if it be indicated that it is to be treated as a confidential document, then a broad application is to be given to section 66 (3) of the FA Act.

44. ***The Treasury Board.***—The Board draws its general authority from Part I of the FA Act. It consists of the Minister of Finance as Chairman and five members of the Privy Council named by the Governor in Council. Section 4 authorizes the Chairman to designate an officer of the Department of Finance to serve as Secretary. Treasury Board is a statutory body and, when acting within its statutory powers, a concurrence by the Governor General is not required. For example, the Board is given, by section 7, a power to make regulations

(*a*) respecting the collection, management and administration of, and the accounting for, public money;

(*b*) respecting the keeping of records of property of Her Majesty;

(*c*) subject to any other Act, prescribing rates of compensation, hours of work and other conditions of employment of persons in the public service;

(*d*) notwithstanding the Civil Service Act,

(i) authorizing the payment to persons in the public service of compensation or other rewards for inventions or practical suggestions for improvements, and

(ii) governing payments to persons in the public service by way of reimbursement for travelling or other expenses and allowances to meet special expenses arising out of their duties; and

(*e*) subject to any other Act, for any other purpose necessary for the efficient administration of the public service.

The words in (*c*), "subject to any other Act", qualify the general power and have the effect of making participation of the Civil Service Commission necessary before a regulation of concern to the Civil Service Act is made. Of course, if there is no legislation applicable in a field, Treasury Board may make regulations without reference to the Commission—for example, with respect to positions on ships which are exempted by section 57 from the control of the Civil Service Commission.

45. The most frequent authority problem an auditor encounters is to decide whether it is an order in council or a Treasury Board minute that is necessary in cases within the ambit of section 5 (1) of the FA Act. It reads:

> The Treasury Board shall act as a committee of the Queen's Privy Council for Canada on all matters relating to finance, revenues, estimates, expenditures and financial commitments, accounts, establishments, the terms and conditions of employment of persons in the public service, and general administrative policy in the public service *referred to the Board by the Governor in Council or on which the Board considers it desirable to report to the Governor in Council,* or on which the Board considers it necessary to act under powers conferred by this or any other Act.

The words in italics indicate that if a matter is "referred" to the Board, it has power to issue a minute, but if the Board originates, an order in council must evidence the policy adopted unless it has clear authority to decide.

46. Subsection 2 of the same section provides that:

> The Governor in Council may authorize the Treasury Board to exercise all or any of the powers, other than powers of appointment, of the Governor in Council under the Civil Service Act, the Public Service Superannuation Act, the Defence Services Pension Act, and Parts II to VI of the Royal Canadian Mounted Police Act.

subject to the qualification set out in subsection 4 that the Board

in the exercise of its powers under this or any other statute is subject to any direction given to it by the Governor in Council, and the Governor in Council may by order amend or revoke any action of the Board.

It is admittedly difficult to be certain what delegation the Governor in Council or the Cabinet makes to Treasury Board, especially in the area where Executive, rather than statutory powers, are exercised. While more is now known of the workings of the Cabinet than was the case fifty years ago, the situation is still more or less as it was when Dr. Lowell opened a chapter of his book, "The Government of England", with these words:

A German professor in a lecture on Anatomy is reported to have said to his class, "Gentlemen, we now come to the spleen. About the functions of the spleen, gentlemen, we know nothing. So much for the spleen." It is with such feelings that one enters upon the task of writing a chapter upon the Cabinet.

Subject to specific provisions of a statute, an auditor is, in most cases, on safe ground when he assumes that a Treasury Board minute relating to a financial matter has the requisite authority behind it, because whether action is evidenced either by an order in council or Board minute, the Cabinet is collectively answerable to Parliament. On the other hand, if the subject matter affects private rights—an expropriation of property might be an example—a declaration in the text as to the delegation by the Governor in Council is to be expected because an advisory committee has not a power to make a binding decision.

47. ***Evidencing Decisions of Treasury Board.***—The committee comprising the Governor in Council recommends a decision to the Governor General by means of a formal minute authenticated by the President of the Council; when this minute is approved by the Governor General it becomes an 'Order' or 'Order in Council', as the case may be. Consequently, the text may not later be varied (except to make typographical corrections) unless an amendment is made in the same manner as was the original. Where decisions taken at a Treasury Board meeting require concurrence of the Governor in Council before having legal effect, they are brought collectively to the notice

of the Council by an all-inclusive recommendation of the chairman for orders in council—this is the reason why a single Privy Council number is sometimes associated with numerous orders in council bearing the same date.

48. Treasury Board gives many directions which do not require the concurrence of the Governor in Council and with respect to these there is no statutory direction as to the manner in which they are to be evidenced. Section 3 (3) of the FA Act leaves that to the Board:

> Subject to the terms of this Act and any directions of the Governor in Council, the Treasury Board may determine its own rules and methods of procedure.

No rule has issued on the subject but a formal minute signed by the Secretary, and sometimes sealed, is generally used when Board approval is, by statute, required for the doing of some act or thing. However, in addition to formal minutes there are also letters signed by the Secretary or a member of the Treasury Board staff which may bear a Treasury Board number but do not invariably indicate that they are written 'under direction'. These may purport to broaden or vary a direction already circulated and thus present the problem of status. In considering whether these letters may be accepted as amendments to minutes already issued, auditors should bear in mind that the agenda for a meeting of the Board may be lengthy and that many decisions are given verbally, the practice being for the Secretary to draft and issue suitable texts in due course. Should it develop that such a text requires clarification, a communication of the Secretary, if not contradictory in principle to that originally issued, may be regarded in the audit as a clarifying direction.

49. Treasury Board is not a division of government in the same sense as is a department. The general duty of the Board is to make "regulations" to be applied by departments, with staff of the Department of Finance servicing the Board for the proper conduct "of the business of the Board". Sometimes Treasury Board letters, signed by members of the Secretary's staff, are observed in files which advance points of view rather than direct. In the audit, no special sanction for a transaction should be presumed to exist merely because an officer serving Treasury Board expressed an opinion. It is the Board that directs, and in this regard the situation in Canada differs in no way from that in England where decisions comparable in status

to administrative directions of our Treasury Board are styled 'official Treasury letters' and are distinguished from ordinary Treasury letters in this way:

> Official Treasury letters go out in the name of 'The Lord Commissioners of Her Majesty's Treasury' who must be mentioned once by their full title (generally after 'I am directed by') while in the rest of the letter they may be referred to as 'My Lords'. (Heath, "The Treasury".)

50. ***Approval of Accounting Systems.***—Treasury Board has the general purview of financial practices and procedures, and by section 5 (3) the Board

> may prescribe from time to time the manner and form in which the accounts of Canada and the accounts of the several departments shall be kept, and may direct any person receiving, managing or disbursing public money to keep any books, records or accounts that the Board considers necessary.

The words "may prescribe" and "may direct" indicate that no imperative duty is being placed on the Board. However, if Treasury Board gives a direction, those concerned must give effect to the instruction.

51. ***The Prime Minister.***—The Prime Minister is selected by the Governor General as an exercise of the prerogative. No order in council is required. Walpole was the first prime minister in British history and he regarded *primus inter pares* as descriptive of his status in relation to other members of the Cabinet, but as Keith points out:

> It is to the Prime Minister that heads of departments turn in case of urgent emergency, where Cabinet sanction is normally needed, but where time forbids its being obtained. In such a case the Prime Minister has implied authority to decide, certain of homologation later by the Cabinet. ("The British Cabinet System", p. 89.)

The last sentence may be elaborated by another quotation from Lowell:

> The Prime Minister stands between the Crown and the Cabinet; . . . it is the Premier who acts as the connecting link with the Cabinet as a whole, and communicates to him their collective opinion. To such an extent is he the representative of the Cabinet in its relations to the Crown that whereas the resignation of any other Minister creates only a vacancy, the resignation of a Premier dissolves the Cabinet altogether. ("The Government of England", vol. 1, p. 71.)

52. The Prime Minister may at any time act "for" a member of his Cabinet. Chalmers and Asquith ("Outlines of Constitutional Law") accept as fundamental that "he assumes responsibility for all the activities of his colleagues", and from that it seems proper to assume in the audit that he, with power to instruct and overrule, has authority to decide in place of a Minister. However, where a statute involves the exercise of a discretion by a particular Minister, instances may occur where the Prime Minister is designated as an acting Minister by order in council.

53. ***Ministers.***—A Minister as head of a department is appointed by order in council. No Canadian statute requires that a Minister take an oath of office. In practice, an oath is administered:

> I do solemnly swear and sincerely promise and swear that I will duly and faithfully and to the best of my skill and knowledge execute the powers and trusts reposed in me as Minister of . So help me God.

54. The size of a cabinet is a decision of the Prime Minister, but salary payments may be made only to those listed in the Salaries Act or other legislation. Again, the reason is that of safeguarding the independence of Parliament against the Crown. The B.N.A. Act does not require that a Minister be a member of the Senate or House of Commons, but if a Minister did not become a member within a reasonable time—as measured by the House of Commons—the doctrine of responsible government would be scuttled. The fact that a Minister is not a Member of Parliament does not limit his authority over a department, nor does defeat in election impair either legal authority or right to salary. For example, there is a relatively recent United Kingdom case where a Minister was twice defeated in by-elections before he withdrew from the Cabinet. The essential in the audit is that appointment be by the Governor in Council.

55. The death or resignation of the Prime Minister automatically ends the term of office of all members of the Cabinet. This is a constitutional usage founded on the consideration that each Prime Minister must enjoy the power to compose his Cabinet. If a Minister resigns, the date of acceptance influences salary payments. In this regard, auditors will be guided by section 11 of the Interpretation Act:

> Where an Act, or any order in council, order, warrant, scheme, letters patent, rule, regulation, or by-law, made, granted, or issued, under a power conferred by an Act,

(a) is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day;

(b) is expressed to expire, lapse, or otherwise cease to have effect on a particular day, the same shall be construed as ceasing to have effect immediately on the commencement of the following day.

56. A Minister's termination of office automatically rescinds any special authorizations relating to members of his secretarial staff who were appointed by Executive order.

57. In section 31 of the Interpretation Act is to be found:

Words directing or empowering a Minister of the Crown to do any act or thing, or otherwise applying to him by his name of office, include a Minister acting for, or, if the office is vacant, in the place of such Minister, under the authority of an order in council, and also his successors in such office, and his or their lawful deputy.

An acting Minister must be a Privy Councillor, but it is not imperative that he hold a portfolio. It is customary for the same member of the Government to function (without a new order in council) as acting Minister whenever the Minister is again away or is incapacitated through illness, etc. Appointment does not make an acting Minister eligible to the salary of the Minister, even when the office is vacant; but in such circumstances the acting Minister may, with consent, set up a provisional secretarial establishment.

58. An associate Minister, who is appointed under the authority of a statute, differs from an acting Minister in that he is the holder of an office, is entitled to salary and has full capacity to exercise and perform such of the powers, duties and functions of the Minister with whom he is associated as may be assigned to him either by statute or order in council. In all matters relating to administration, an auditor will assume, in the absence of some limiting direction, that an associate Minister exercises the same ministerial authority as does the Minister with whom he is associated. Being a member of the Cabinet, he may be designated, by order in council, acting Minister over any other department.

59. ***Parliamentary Assistants.***—A parliamentary assistant does not need to be a Privy Councillor. He is not the holder of an office in the Executive Government but is, as a Member of Parliament, a person selected:

to assist a Minister of the Crown in such manner and to such extent as the Minister may determine and to represent his department in the House of Commons in the absence of the Minister therefrom.

60. While there were a few World War I appointments, the plan of parliamentary assistants really dates from 1943, so far as Canada is concerned. On April 20, 1943, the then Prime Minister was queried as to the situation resulting were a portfolio to become vacant. He replied:

> Where a new Minister is not appointed, an acting Minister is always immediately appointed when a Minister unfortunately passes away or resigns. The parliamentary assistant will remain the assistant to the acting Minister. The responsibility will be on a member of the ministry all the time. The parliamentary assistant to the Minister will not relieve the Minister of his responsibility. (Debates, p. 2366)

Consequently, in the audit it will be regarded that the exercise of a statutory power is not vested in a parliamentary assistant.

61. *Departments.*—Canadian usage is to create departments by means of Acts of Parliament. In a few instances—it is more general in some other British countries—administrative divisions are declared to be bodies corporate; but it should not be presumed in the audit that this in itself diminishes either the control of the Executive or the obligations of the Minister to Parliament. Keir and Lawson conclude that, in law,

> it appears that whether the department has been incorporated or simply given a name by which it may be sued, the object in either case is merely to remove procedural difficulties and not to confer a substantial right of action where there was not one before. ("Cases in Constitutional Law", p. 226.)

Adapting this to the audit, any body which is not clearly independent of the Executive should be regarded as subject to the same practices as regulate departments generally.

62. *Deputy Head.*—The general authority to appoint a deputy head is section 6 of the Civil Service Act. It provides that appointment (which includes fixing of salary rate) be by the Governor in Council. Section 7(2) of the Act provides that:

> A deputy head shall give his full time to the Civil Service, and shall discharge all duties required by the head of the department, or by the Governor in Council, whether such duties are in his own department or not.

A deputy head is an official, consequently while section 31 of the Interpretation Act permits the "lawful deputy" of a Minister to exercise powers of the Minister, it seems reasonable to distinguish between decisions relating to 'administration' and 'policy'. A deputy head symbolizes the civil service, and Arthur Balfour aptly pointed out, in an introduction to Bagehot's "The English Constitution", that the permanent officers do not

> control policy; they are not responsible for it. Belonging to no Party, they are for that very reason an invaluable element in Party Government. It is through them, especially through their higher branches, that the transference of responsibility from one Party or one Minister to another involves no destructive shock to the administrative machine.

63. In all ordinary 'business' acts of departmental administration—using a phrase of the 1932 United Kingdom Committee on Ministers' Powers—a decision of a deputy head is as effectual as that of his Minister, but a different view appears necessary when a public policy is involved—if such a decision has financial implications, the appropriate audit view is that it is one which should be by the Minister, for he is answerable to Parliament. To illustrate, in *Point of Ayr Collieries* v. *Lloyd George,* a point raised was the power of the permanent head of a department to sign an order taking over the control of the collieries. The validity was upheld, but it was observed:

> . . . in a case of such importance as this, signature by the Minister himself might appear to be more appropriate than signature by someone on the staff of the Ministry, however highly placed . . . The obvious advantage of having matters of this high importance signed by the Minister is to take away any possibility of suggesting that he personally has not given attention to the case.

64. Audit officers will note whether an acting deputy head meets the test set out in section 8(1) of the Civil Service Act, which reads:

> Unless otherwise provided by the Governor in Council, in the absence of a deputy head, the assistant deputy head, or if there is no assistant deputy head, or the assistant deputy head is absent, an officer or clerk named by the head of the department shall have the powers and perform the duties of the deputy head.

65. ***Departmental Administration.***—The making of decisions in a department pivots on the constitutional rule that

> in order that an act of the Crown may be recognized as an expression of the Royal will and have any legal effect whatever, it must

in general be done with the assent of or through some Minister or Ministers who will be held responsible for it. (Dicey's "Law of the Constitution", p. 321.)

No Minister can personally work a large department. He is, however, as Lord Shaw said in *Local Government Board* v. *Arlidge,* "answerable in Parliament for every departmental act". This was qualified by the Lord Chancellor's comment that

he is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he. . .should do everything personally would be to impair his efficiency.

This case involved the exercise of a statutory discretion, but is of audit interest because it declares that a determination which is signed and sealed and issued in correct form is to be regarded as completely made and stands as a deliverance of the Minister for which he is answerable to Parliament. Thus in the constitutional sense, a Minister is answerable for many decisions of which he may have little or no personal knowledge.

66. Where there is a statutory direction that something be done with the approval of or to the satisfaction of a Minister, or under rules made by a Minister, an auditor is on safe ground when he assumes that the Minister or the deputy head should be personally identified with the decision and that responsibility may not be delegated. As a rule, directions given should be in writing, but it does not necessarily follow that, in the audit, the original be examined; circumstances will decide in each case. For example, printed or mimeographed directives issued by a department, and purporting to carry the approval of the Minister, may be accepted as the equivalent of original documents bearing his signature.

67. A recurring problem is the dividing line between the field of a department and that of the Government as a whole. Years ago in a case involving a department of the Government of Quebec an attempt was made to draw the line:

The head of each department has the management of the affairs pertaining to it, and he can, on his own responsibility, transact all matters of ordinary official routine or of departmental administration and all further acts of administration for which statutory authoriza-

tion has been given to him. All other matters have to be submitted to the executive council, and the approval or sanction of the Lieutenant Governor must be obtained before he can act concerning them. (*R.* v. *Waterous Engine Works.*)

A later decision (*Livingston* v. *The King*) involved what is now the Department of National Defence. The Minister signed an agreement in 1911 under which Livingston was to enjoy an exclusive franchise in Kingston for the repair, etc., of uniforms of cadets of the Royal Military College. The agreement was to continue in effect until June 1915, subject to periodic review of prices. However, in 1912 the Government settled all accounts outstanding and terminated the agreement. The Government contended that the agreement was not of a routine or departmental nature as would enable the Minister to fix liability upon the Crown. The court agreed:

I do not think it was within the powers of the Minister to enter into a contract binding the Crown for a term of years without the approval of the Governor in Council.

On the other hand, the Supreme Court of Canada has said:

There is no statute here imperatively requiring that all contracts by the Crown shall be evidenced by a writing, and in the absence of such a special statute the Crown cannot refuse to pay for materials bought by its officers in the performance of their duties and delivered to them for public works. (*The Queen* v. *Henderson.*)

But a financial transaction may not be passed in the audit simply because work was performed or goods supplied; there is a duty to establish that procedures stipulated by legislation or Executive orders have been observed—for example, regulations made under the authority of section 39 of the FA Act. An auditor should expect to find copies of Executive orders in the records for all agreements involving government policy, unless an enactment or regulation centres responsibility on a particular Minister; but surrounding circumstances will influence his view when the transaction is related to the routine of departmental administration.

68. Once an agreement is the subject of an Executive order a department may not vary, in substance, the terms. An illustration may be drawn from *The King* v. *Peat Fuels Limited*:

. . .the Deputy Minister of Mines notified the defendant in writing that the lease would expire on October 31, 1928, "and that the only option now remaining to the company to secure return of the plant

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and equipment leased was by compliance with clause 11 of the agreement." The wording of this notice might give rise to an inference that in the opinion of the Deputy Minister it was optional with the defendant to take over the property and plant. If this was his opinion it was clearly erroneous and in any event the Crown is not bound by the error or inadvertence of its officers, nor would the Crown be bound by any deliberate intention of its officers without proper authority to alter the terms of a written agreement, and no such authority was established by the evidence.

However, auditors will bear in mind that, when an authorization to a Minister is general in terms, he may agree to such conditions as he deems desirable.

69. The passing of an Executive order does not make a contract. It is simply the authority to a Minister to enter into a contract. The Department of Public Works was once empowered by an order in council to contract, with the order setting out all material points to be covered by the contract. A copy was sent to the company, the covering letter saying, "an agreement is being prepared and will be submitted to you shortly." The company wrote that the terms of the order in council were satisfactory to it. No agreement was signed. It was held by the Supreme Court (*Halifax Graving Dock Co.* v. *The King*) that no contract existed because there never was a consensus *ad idem* between the parties.

70. ***Contracts are Conditional on Appropriation.***—The Crown normally may make whatever contracts as may be felt desirable and:

> Contracts made on behalf of the Crown by its officers or servants in the established course of their authority and duty are Crown contracts and as such bind the Crown. The nature and extent of the authority may be defined by constitutional practice or express instructions, or inferred from the nature of the office or the duties entrusted to the particular officer or servant. (*State of New South Wales* v. *Bardolph.*)

But the other party accepts the risk that payments are dependent on appropriation of money. This may, or may not, be stated in the contract, but it is immaterial because section 38 of the FA Act declares:

> It is a term of every contract providing for the payment of any money by Her Majesty that payment thereunder is subject to there being an appropriation for the particular service for the fiscal year in which any commitment thereunder would come in course of payment.

Whether funds are, in fact, available to discharge a contractual obligation is a question of law. Reference is now made to the matter solely to point out that there is no audit obligation to take notice of cases of hardship resulting from inability to pay accounts. Nor is it necessary that an auditor consider the legal position of a contractor whose contract was not recorded as required by section 30 of the FA Act, but there is an audit obligation to take notice whenever a department fails to apply for the certificate of the Comptroller.

71. ***Rescission of Agreements.***—It was once regarded that the Crown had an unfettered right to terminate any undertaking at will, the reason being:

> A Minister cannot, by agreement, deprive himself of a power which is committed to him to be exercised from time to time as occasion may require in the public interest, or validly covenant to refrain from the use of that power when it may be requisite, or expedient in his discretion, upon grounds of public policy, to execute it. (*The King* v. *Dominion of Canada Postage Stamp Vending Company.*)

The point involved was related to Revenue, but it can arise in expenditure contracts. However, the trend of thought is to place a limitation on invoking "the public interest" to terminate an agreement—the growing view is to regard the right as available only where an implied term to that effect exists.

72. ***Departments Acting as Agents.***—Sometimes a transaction is observed where one department's funds are committed by action of another department. When the department was authorized to act as agent no exception need be taken, but section 31 (1) of the FA Act is specific:

> No charge shall be made against an appropriation except upon the requisition of the appropriate Minister of the department for which the appropriation was made, or by a person authorized by him in writing.

Consequently, it may not be regarded that one department acting independently may commit a vote of another, so when an auditor observes a letter or other document which may present a financial problem to another department, notice should be taken of it and information passed to the appropriate supervisor of audit.

73. *The words "Shall" and "May".*—In searches for authority the most troublesome words that auditors encounter are "shall" and "may" because the immediate intent is influenced by the context. As was said in *Montreal Street Railway Company* v. *Normandin*:

> The question whether provisions in a statute are directory or imperative has very frequently arisen . . . but . . . no general rule can be laid down, and . . . in every case the object of the statute must be looked at . . . When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.

Therefore, should it be noted in the audit that a particular form was not used, although a statute directed that it "shall" be used, it does not follow that audit reference is necessary. One of the legal text books provides a convenient illustration:

> To hold that an Act which required an officer to prepare and deliver to another officer a list of voters on or before a certain day, under a penalty, made a list not delivered till a later day invalid, would, in effect, put it in the power of the person charged with the duty of preparing it to disfranchise the electors, a conclusion too unreasonable for acceptance. (Maxwell's "Interpretation of Statutes", p. 321.)

On the other hand, audit notice would have to be taken if the aim and object of the legislation would be plainly defeated if the command to do something in a particular manner did not imply a prohibition to do it in any other. The foregoing is given solely to warn auditors against forming an opinion by merely looking at the word "shall", which in some instances the law officers will rule means "may", just as they, in exceptional instances, may decide that "may" is the equivalent of "must".

THE AUDIT OF REVENUE

74. Section 67 of the FA Act permits the audit of Revenue to be performed in such manner as the Auditor General "may deem necessary", but the audit is to be of a nature as will establish whether "in his opinion"

(*a*) the accounts have been faithfully and properly kept,

(*b*) all public money has been fully accounted for, and the rules and procedures applied are sufficient to secure an effective check on the assessment, collection and proper allocation of the revenue.

75. Section 70 directs that in the report to the House of Commons the Auditor General call attention to "every case" in which he has observed that:

(*a*) any officer or employee has wilfully or negligently omitted to collect or receive any money belonging to Canada,

(*b*) any public money was not duly accounted for and paid into the Consolidated Revenue Fund,

(*e*) there has been a deficiency or loss through the fraud, default or mistake of any person.

76. One of the few directions in the FA Act where the Auditor General is to report to other than the House of Commons is to be found in section 73:

> Whenever it appears to the Auditor General that any public money has been improperly retained by any person, he shall forthwith report the circumstances of such cases to the Minister [of Finance].

The purpose, of course, is to make certain that action is taken to recover the money, for example by use of section 89.

77. ***"Public Money" Definition.***—The foregoing directions revolve around the words "public money", the statutory definition being:

> "public money" means all money belonging to Canada received or collected by the Receiver General or any other public officer in his official capacity or any person authorized to receive or collect such money, and includes
>
> (i) duties and revenues of Canada,

(ii) money borrowed by Canada or received through the issue or sale of securities,

(iii) money received or collected for or on behalf of Canada, and

(iv) money paid to Canada for a special purpose.

The aim of the opening clause is an all-embracing definition, while the tabulation is 'for greater certainty'. The words "duties and revenues of Canada" are from section 102 of the B.N.A. Act, where they were used in 1867 for the same purpose as is "public money" in the FA Act. Presumably they are repeated to make certain that every right to collect given by the B.N.A. Act is covered by the definition. Duties are Revenue, and the word "revenue" at the end of section 67 (*b*) is conveniently defined, so far as the audit of Revenue is concerned, by these words:

I take 'revenue' to be the moneys which belong to the Crown, or moneys to which the Crown has a right, or which are due to the Crown. (*Stephens* v. *Abrahams.*)

78. An example of receipts which are not public money is given by section 39 of the National Defence Act, which wholly excludes Service canteen, etc., receipts from the ambit of the FA Act. But when an enactment merely consents to certain moneys being disbursed without passing through the hands of the Receiver General, that does not remove the moneys from the Revenue category—section 20 of the Post Office Act and section 6 of the Government Harbours and Piers Act are examples. Audit directions in the FA Act continue to apply.

79. ***'Special Purpose' Receipts.***—These receipts are included in the definition of "public money". Various statutes permit money being accepted for special purposes, but the enactment most frequently relied on is section 20 (1) of the FA Act, so it will be used to review the audit obligation. It reads:

Money received by or on behalf of Her Majesty for a special purpose and paid into the Consolidated Revenue Fund may be paid out of the Consolidated Revenue Fund for that purpose, subject to the provisions of any statute applicable thereto.

In applying this section, a step in the audit is to make certain that it is not used to establish a 'special purpose' account for moneys regulated by section 19, which reads:

19. (1) Where money is received by a public officer from any person as a deposit to ensure the doing of any act or thing, the public officer shall hold or dispose of the money in accordance with regulations of the Treasury Board.

(2) Where money is paid by any person to a public officer for any purpose that is not fulfilled, the money may, in accordance with regulations of the Treasury Board, be returned or repaid to that person, less such sum as in the opinion of the Board is properly attributable to any service rendered.

(3) Money paid to the credit of the Receiver General and not being public money may be returned or repaid in accordance with regulations of the Treasury Board.

All moneys received within the meaning of section 19 are public revenue because they are received for a public purpose. On the other hand, the Crown makes no claim to ownership of moneys subject to section 20. It is the status of the sum when received, not the object to which it will be applied, that governs. An illustration is the finding with respect to certain receipts of the wartime film "Desert Victory". This film was made by the British Army Film Unit as a public project and at public cost. Receipts from first showings in various cities were, with Treasury sanction, credited to Service welfare funds. The audit report questioned the power so to do and the 1945 Public Accounts Committee (U.K.) agreed that such receipts arising from the use of public property should be recorded as public funds.

80. The parliamentary audit of a special purpose account is primarily to observe (*a*) safeguards employed, and (*b*) that disbursements were for the named purpose. Unless the law requires, or it is agreed that the Auditor General certify as to the state of the account, no obligation rests on the Audit Office to concern itself with the interests of the person who deposited the money. However, as a convenience, a department may agree to arrange bookkeeping services for a staff activity, or where the depositor is another government. In these cases an audit certificate is sometimes expected by the payor.

81. Where it is a departmental staff account (for example, a staff-operated canteen), or when accounts are maintained for a charitable body, the Audit Office obligation is to observe safekeeping procedures and the regularity of payments; only in exceptional circumstances need the 'merit' of expenditures be reviewed. The foregoing is not applicable, of course, to mess and canteen accounts of the Canadian Forces because, as mentioned before, by section 39 of the National Defence Act it is provided that such accounts be audited as the Minister of National Defence may direct.

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82. An account financed by another government is not one of official interest to the Parliament of Canada, nor is the Canadian department administering the account answerable to the legislature that appropriated the funds—its status is that of an agent rather than of a voluntary trustee. At the 1951 conference of Commonwealth auditors general, it was agreed that when the auditor general of the spending Government certified such an account, (*a*) it was an administrative act performed for the benefit of the department of the Government which provided the money, (*b*) no report would normally be made to the other auditor general, and (*c*) the latter may make whatever examinations he considers necessary.

83. ***Receiver General of Canada.***—Section 16 of the FA Act requires that every person who collects "shall pay all public money coming into his hands to the credit of the Receiver General". The office of receiver general is an ancient one, as references are to be found in statutes as early as the reign of Henry VIII. Many years before Confederation there was a Receiver General in Canada and he was a member of the Cabinet. The office has since been merged into that of the Minister of Finance, so section 8 of the FA Act declares:

> There shall be a department of the Government of Canada called the Department of Finance over which the Minister of Finance and Receiver General appointed by commission under the Great Seal of Canada shall preside.

84. Unless a collector is an official of the Department of Finance, he does not function as an official of the Receiver General. Ministers named in the various taxing statutes are answerable to Parliament for application given, but section 16 of the FA Act vests in the Receiver General the exclusive power to designate the banks in which deposits are to be made. This direction is primarily a safeguarding one—to make certain that all moneys received go to the credit of Consolidated Revenue Fund—and is one reason for section 73 of the FA Act.

85. ***Responsibility for Accounts.***—Within a department a relationship of master and servant does not exist. From the deputy minister to a junior clerk the status of everyone is that of a

servant of the Crown. Durell, when considering responsibility for signing account certificates, describes the rule applicable as being:

> An officer, of whatever rank, who signs a certificate is personally responsible for the facts certified to, so far as it is his duty to know them or to the extent to which he may reasonably be expected to be aware of them. ("Parliamentary Grants".)

That is, the clerk who makes the first entry is responsible for his work; in turn, his immediate superior is answerable for the state of all accounts under his supervision. Thus a steadily lengthening chain of responsibility is formed until the Minister himself is reached. He is not personally answerable, in law, for the sins and omissions of the staff, but he is the one who is politically answerable to Parliament.

86. ***Cases of Frauds.***—Should it be that a fraud is perpetrated by an officer of a department acting as agent, or performing administrative services for a revenue collecting department—the Treasury service is an example—the Minister over the agency or servicing department decides the action to be taken because the officer is under his direction and control. Should a fraud take the form of revenue being diverted before it reaches Consolidated Revenue Fund, there is an audit duty to ascertain whether:

(*a*) action was taken to report to the appropriate authorities, including the Minister of Finance,

(*b*) an endeavour was made to recover the money, and

(*c*) any other officer may be associated with the matter.

87. ***Levies Must be Authorized by Parliament.***—Section 67 of the FA Act places emphasis on the audit of accounts maintained and the collecting process. Auditors, however, have constantly to bear in mind that the House of Commons jealously maintains its exclusive right to impose taxes, and as Wade and Phillips note:

> the control of the House of Commons over taxation is far more real than is its control over expenditure. ("Constitutional Law".)

In other words, an Appropriation Act permits exercise of discretion in selecting objects of expenditure, but there is an absolute prohibition against imposing a levy without parliamentary sanction. There is, therefore, an audit duty to call attention to any scheme of levies which is imposed without

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clear authority. In particular, auditors should scrutinize schemes fixing licences, fees, etc., imposed to facilitate administration of a statute. A good illustration is provided by the *Wilts United Dairies Case.* During World War I English legislation provided for the control of production, transport, distribution, sale, etc., of milk. The Food Controller issued an order regulating purchases of milk in certain areas and fixed a gallonage charge to be paid by those licensed to purchase in the areas. His right so to do was contested and, in defence of the scheme of charges, it was contended that, due to the nature of the legislation, licensing was necessary to the end that there be uniformity throughout in cost to consumers, and it was with this objective in mind that gallonage fees in certain areas were assessed. The plea was rejected:

> . . . in view of the historic struggle of the Legislature to secure for itself the sole power to levy money upon the subject, its complete success in that struggle, the elaborate means adopted by the Representative House to control the amount, the conditions and the purposes of the levy, the circumstances would be remarkable indeed which would induce the Court to believe that the Legislature had sacrified all the well-known checks and precautions and, not in express words, but merely by implication, had entrusted a Minister of the Crown with undefined and unlimited powers of imposing charges upon the subject for purposes connected with his department.

88. *Taxes and Imposts.*—A query sometimes is: What is the difference between a 'tax' and an 'impost'? An impost is, generally, a levy on a commodity—customs duty is an example —payment permitting release or use. In *Atty. Gen. for British Columbia* v. *Atty. Gen. of Canada,* it was said of customs duties that they

> are, no doubt, in at least one aspect, 'taxation' within the meaning of that term as ordinarily used . . . they are a mode or system of taxation for the raising of money and are a typical form of indirect tax. But they are . . . something more, they are tolls levied at the border as a condition of permission to import goods into the country being granted by the governmental authority clothed with jurisdiction either entirely to prohibit their entry or to prescribe conditions on which such entry may be effected.

A tax payment, on the other hand, creates neither a right nor a privilege. As was once said in the Supreme Court of the United States:

> The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privilege of living in a civilized society, established and safeguarded by the devotion of taxes to a public service.

89. Because a licence is revocable at will, it has attributes of a tax—an old declaration still being regarded as defining:

A dispensation or licence properly passeth no interest, nor alters or transfers property in anything, but only makes an action lawful, which without it had been unlawful.

90. ***Fees and Service Charges.***—Some statutes stipulate the sum to be collected for a service, while others vest in the Executive a power to fix fees. When a fee is fixed by either means, an obligation exists to collect. An illustration is the application once given to an English Weights and Measures Act which fixed a scale of fees and directed that municipal authorities make the inspections. To defray the cost, it was provided that receipts be retained by the municipalities. Nevertheless, one council decided that inspection be made gratis. Another statute provides that councillors be personally surcharged when revenues were lost by an illegal decision in which they participated. In this instance a surcharge was made. Those concerned appealed to the courts for relief but failed, it being held that

the inspector had an obligation imposed upon him by the statute to take these fees.

91. A fee is not the same as a tax and in various statutes it is left to the discretion of the Governor in Council or a Minister whether a scale of fees will be established by regulation. In such an event, the legislative intent often is simply that of providing a means to recoup all or part of the cost of providing a service. The scale, of course, should be related to cost, otherwise a tax levy might be in effect despite section 53 of the B.N.A. Act:

Bills for appropriating any part of the public revenue, or for imposing any tax or impost, shall originate in the House of Commons.

92. A new general power to recover cost of services is given to the Governor in Council by section 18 of the FA Act:

Where a service is provided by Her Majesty to any person and the Governor in Council is of opinion that the whole or part of the cost of the service should be borne by the person to whom it is provided, the Governor in Council may, subject to the provisions of any Act relating to that service, by regulation prescribe the fee that may be charged for the service.

The principle of charging for services is not an innovation; it has long been accepted that public resources should not be employed gratuitously in the service of private individuals

merely to save them from expense. For example, some years ago a shipping company trading in Chinese waters learned to its sorrow that not infrequently 'passengers' turned out to be accomplices of river pirates. It arranged that the British Army post soldiers on its ships. Later the company refused to pay the cost but lost the case, it being held that the company did not have the right to demand the protective service, nor was the Army under obligation to guard the ships. (*China Navigation Co.* v. *Attorney General*)

93. Parliament has not attempted, by section 18 of the FA Act, to define what is 'a service provided to any person', instead it has delegated the task to the Governor in Council; but unless an order is made, charges (or none at all) are a matter of administrative discretion, unless some other enactment is applicable. However, section 18, by implication, indicates a practice that Parliament favours, therefore audit reference to inadequate charges or to free services is within the general direction in section 70 to call attention to any case that the Auditor General considers should be brought to the notice of the House of Commons.

94. ***Powers to Select or Vary Rates.***—In some statutes it is provided that a levy may be assessed under alternative headings. The selection is, as a rule, a matter to be decided by the department:

> Where there is a clear alternative given to the Crown to tax under one head or another, the right of choice belongs to the Crown. (Halsbury's Statutes of England, 2nd ed., vol. 31, p. 541.)

95. Section 98 of the Excise Tax Act provides that when goods are offered at a price

> which in the judgment of the Minister is less than the fair price on which the tax should be imposed, the Minister shall have the power to determine the fair price and the taxpayer shall pay the tax on the price so determined.

Here technical skill in appraisal of values, etc., has to be exercised with ultimate responsibility resting on the Minister. In *The King* v. *Noxzema Chemical Company of Canada,* the Supreme Court had to consider the section and a conclusion reached was:

> In my view, section 98 confers upon the Minister an administrative duty which he exercised and as to which there is no appeal.

96. Sometimes statutes permit the Governor in Council to reduce rates. Customs statutes include instances where this may be done. It is the exercise of a delegated power, so the only audit step necessary is to make certain that the mode of action conformed with the statutes.

97. ***Taxes and Imposts Must be Collected.***—The public interest demands that there be impartiality in the collecting process:

> . . . If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. (*Partington* v. *Attorney General*)

An auditor should evaluate administrative activities by use of the text of the statute because a conclusion influenced by compassion may establish a bad precedent. If relief is in the public interest, that may be extended by the application of remission authorities such as section 22 of the FA Act. An illustration of the rule of strict observance is an Exchequer Court decision involving duties assessed on a consignment of jewels, although they were stolen while in the custody of Customs. It was held that the levy was properly made:

> The temporary control and custody of goods imported into Canada, which the law gives to the officers of the Customs to the end that such goods may be examined and appraised, is given for the purpose of the better securing the collection of the public revenues. Without such a power the State would be exposed to frauds against which it would be impossible to protect itself. (*Corse* v. *The Queen.*)

98. Nor does the fact that a civil servant, acting in the performance of his duties, gave wrong advice relieve a taxpayer from liability to pay. A case at point is *Minister of National Revenue* v. *Lakeview Golf Club.* The Club was assessed for back taxes, plus interest and penalties, although an income tax officer had been consulted in the first year in which a profit was earned and had indicated that he did not regard the Club as liable because of the manner in which it was organized. It was ordered to pay and in the judgment are these words: "the Crown is not bound by the errors or omissions of its servants". Likewise the fact that no attempt was made to assess a tax for a long period of time does not create a status of tax immunity:

> if the plain words of an Act of Parliament imposed a tax, no amount of omission to charge that tax or to insist upon it by

the proper executive officer could control or cut down or override the force of the Act of Parliament itself. (*Dublin Corporation* v. *Trinity College*).

99. ***Rights of Taxpayers.***—It has been pointed out that the text of a taxing statute, not compassion for a taxpayer, is what an auditor keeps in mind when reviewing Revenue assessments and collections. In turn, no obligation is placed on the Auditor General to call attention in his report to the House of Commons to what he may regard as a loophole in a statute. He may draw the matter to the notice of the department concerned, but it is not a report subject as defined by section 70 of the FA Act. The audit is not of the possible intent of Parliament but of the application given to the text of a statute. An observation worth remembering is:

> 'Intention of the Legislature' is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it. In a court of law or equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication. (*Salomon* v. *Salomon.*)

100. ***Payments Received by Cheques.***—Strictly regarded, payment in legal tender is contemplated, especially of levies which 'must be paid in cash and instanter'. However, the obligation on collectors is to raise the Revenue; therefore if no unreasonable risks are taken or partiality shown, the taking of a cheque is not a matter of audit interest. On the other hand, it is of audit concern should (*a*) an officer be the named payee and he negotiates the cheque, or (*b*) notice be given to the public that cheques may be made payable to persons other than the Receiver General.

101. Whether paid in the form of legal tender or by cheque, the duty is to deposit promptly to the credit of the Receiver General. Whenever an auditor observes that cheques are being held by a department, he has an irregularity to report. The fact that a cheque is certified is not a satisfactory explanation for delay in depositing. If the drawer has it certified before delivery, he and the bank join in the obligation to pay, while if the department has it certified after delivery, the bank becomes the debtor.

102. The acceptance of a post-dated cheque is simply a means employed to expedite or ensure collection. It neither relieves the debtor of his liability nor prohibits the Crown from taking currently other action to collect the sum due.

103. ***Grants of Extensions of Time.***—An examination may disclose that a collector has agreed to partial payment and to extend time for payment of the balance. Sometimes this may be an exercise of a statutory discretion, but more frequently the only authority on which the collector can rely is his duty to raise and collect the Revenue, which, under certain circumstances, may mean that he should take whatever steps seem prudent in the ultimate interest of Consolidated Revenue Fund.

104. In cases of time extensions, the Crown having stepped down from the status of sovereignty to that of a commercial collector, the adequacy of the amount taken as a down payment is of concern, as well as the length of time granted. The reasons of the department are to be treated with respect and judged by the circumstances as they existed when the extension was granted. The auditor will also note what administrative safeguards exist against partiality. For example, a delay authorized by the Governor in Council or by a Minister, when based on reports by his officers, is obviously better safeguarded than one granted by an officer in direct contact with the debtor. When the examination leads to the conclusion that a justifiable decision was reached, the transaction may be passed without audit observation.

105. ***"Under Protest" Notices.***—A step in the audit is to establish, if a person protests liability, that moneys received from him were nevertheless deposited as public money. The utility of the notice—that payment is made under protest—is to the taxpayer in proceedings against the Crown, because the Crown has already indicated its right to the money. If the individual succeeds, the matter will rarely be corrected by an adjustment in the revenue accounts, but by an expenditure. No public officer should hold cash or a cheque because someone is protesting liability and the matter is under review.

106. ***Moneys Received Subject to a Condition.***—Subsection 1 of section 19 of the FA Act makes an exception from the requirement that all money received be forthwith deposited to the credit of the Receiver General. The subsection permits an

officer who receives money "as a deposit to ensure the doing of any act or thing" (an illustration might be the deposit accompanying a bid for contract) to "hold or dispose" of the money in accordance with Treasury Board regulations. Practice to date has been to make special regulations for the requirements of each department. An example is a Treasury Board regulation of January 1953, dealing with guaranty deposits received by Collectors of Customs from commercial travellers, tourists, etc.

107. Subsection 2 of section 19 treats with the return of money paid "for any purpose that is not fulfilled". This subsection gives no right to hold, therefore an auditor expects to observe that the money was promptly deposited to Consolidated Revenue Fund. The significance of the subsection is that it authorizes the return, in whole or in part, in accordance with Treasury Board regulations.

108. Occasionally situations arise which do not come within section 19 where the issue of a receipt or deposit of a tendered payment may impair the exercise of an administrative discretion, and an auditor finds that money or a cheque is being held by a public officer. Audit notice has to be taken unless an opinion of the law officers supports the departmental action, because as was said in *Colvin* v. *Nelson Land Board*:

> The Crown can of course act only by its agents, and I cannot think that merely handing the rent to a clerk in a public department will constitute an acceptance so as in itself to impute a knowledge of the payment to the statutory body in which the power of election to forfeit is vested.

109. ***Adjustments Because of a Mistake.***—A problem sometimes arises when a mistake is made in computing an account and more money is received than is required. What is permissive? A department is expected to maintain the highest standards of probity and fair dealing, consequently no audit exception need be taken to an adjustment out of Revenue. This, of course, works both ways; for example, in England pari-mutuel boards at race courses are operated by a statutory board having power to make rules. One duly made was to the effect that payments to holders of winning tickets should be examined before leaving the window "as mistakes cannot be rectified later". A bettor won £42 but was paid £202—the cashier by mistake paying out a substantial number of £5 notes rather than £1. Looking

only at the rule, one might assume that it should control both sides of the wicket; actually, the court disregarded the rule and ordered repayment because the board

> have their full common law rights to recover money which they say has been paid under a mistake of fact. (*Race Course Betting Control Board* v. *Mount.*)

110. It is accepted in law that money paid under mistake of fact may be recovered in litigation, consequently when agreement exists as to amount an adjustment may be made out of Revenue. However, if the mistake is founded on a misinterpretation of the law, he who pays is often unsuccessful in suits to recover. The dividing line between these 'mistakes' is sometimes a thin one, especially when a public authority is involved, so an auditor should expect to find an opinion of the law officers in any unusual case.

111. An adjustment when payment was due to a mistake in law presents the more perplexing problem, especially when records point to departmental officers having indicated a willingness to adjust if the amount paid were later found to be excessive. An illustration might be the *Walkerville Brewery* case. The Department of National Revenue had suits for taxes against breweries. A lump sum settlement was arranged with one, but it later sought an adjustment on the ground that (*a*) another brewery had, in part, successfully contested a like claim of the Department, and (*b*) the Minister had written a Member of Parliament that:

> We do not desire to collect any taxes not properly due the Crown, and if it can be shown that any overpayment has been made by the company in question, or if it is established that they were not liable for any tax that they may have paid, you can assure them that refund will be made.

Part of the headnote to the decision of the Supreme Court of Canada reads:

> The Minister's said letter could not be a basis for claim by appellant. The moneys paid by appellant became part of the Consolidated Revenue Fund of Canada and it would require a statute, or something of like force, to clothe the Minister of a department with authority to agree to repay to a subject moneys voluntarily paid by the subject in settlement of an action brought by the Crown for payment of taxes alleged to have become due and payable. The Minister's assurance in said letter, once it was determined that it was not confirmation of a condition to the original settlement, could

not be sued upon as an independent agreement, because it was not competent for the Minister to fetter the future executive action of the Government.

112. A recent English decision pivoted on disagreement at the outset. A company questioned whether one of its products was subject to purchase tax and, when paying the tax, indicated it would seek a declaration of the Court. It did and succeeded. Nevertheless, a refund was refused on the ground that the Crown could refuse to return money paid voluntarily under a mistake of law; the legal right of the Crown to refuse to refund was not challenged, although publicly criticized as hardly the thing to do in the circumstances. It does not follow that there is an absolute prohibition against an adjustment when a right to recover is barred by the legal maxim: 'ignorance of the law is no excuse'; but when such an adjustment is made, an audit duty is to establish that authority exists to charge Consolidated Revenue Fund, because it is not an adjustment which may be made out of Revenue.

113. *Exaction of Revenue Penalties.*—Some statutes provide that the taxpayer shall be liable to a penalty if an obligation is not discharged by a certain time. Has a department the power to waive? When the purpose of the Act is solely that of raising money, a presumption is that the inclusion of a penalty provision is to facilitate and expedite collection of the tax, and in that event an auditor may assume that a department enjoys a measure of discretion. Unless the statute permits, the department may not declare a general waiver, but in a suitable set of circumstances it may decide that the penalty provision will not be applied in a particular case. For that decision, the Minister over the department is answerable to Parliament, with the audit duty that of establishing whether adequate administrative safeguards exist against partiality influencing the decision not to collect a penalty.

114. An associated problem sometimes is when a department assesses a penalty but does not exact the maximum permissive. If the words 'not exceeding' form part of the penalty enactment, a discretion may be exercised in fixing the amount. In a recent English case (*Inland Revenue Commissioners* v. *Elcock*) it was observed that if a taxpayer wilfully flouted requirements, that was something more serious than a failure to comply due to an act of negligence or carelessness, and justified the imposition of the maximum penalty.

115. In audit tests to establish whether statutory penalties for non-payment by a date certain were applied, it will be regarded that tender of a certified cheque is the same as money. Where it is customary to accept ordinary cheques, the date of mailing or physical delivery may be regarded as the date of payment (providing the cheque is not subsequently rejected by the bank on which it is drawn) because section 39 of the Post Office Act reads:

> Subject to the provisions of this Act and the regulations respecting undeliverable mail, mailable matter becomes the property of the person to whom it is addressed when it is deposited in a post office.

116. ***Tax Remissions.***—Various statutes (the Fisheries Act, for example) provide for remissions of moneys received, but section 22 of the FA Act is most frequently relied on, so it will be used. The section opens with the words:

> The Governor in Council, on the recommendation of the Treasury Board, whenever he considers it in the public interest, may remit any tax, fee or penalty.

It is not necessary in Canada (it is in some countries) that a levy be paid before it may be remitted; on the other hand, the section may not be employed to effect a general reduction in tax rates—it is limited in application to "any particular case or class of case".

117. ***Prerogative Remissions.***—A power to remit is in the Instructions to the Governor General, which provide that, after a conviction, the Governor General may "remit any fines, penalties or forfeitures which may become due and payable to Us", on the advice "of one, at least, of his Ministers". It is not obligatory that a prerogative remission be evidenced by an order in council, but auditors should bear in mind that only "unappropriated" fines belong to the Crown; if legislation directs a special application, then the prerogative right is suspended. For example, the Criminal Code allots fines to the Receiver General only when imposed by reason of:

(*a*) a breach of a revenue law of Canada or which are imposed upon an employee of the Government of Canada in respect of a breach of duty or malfeasance in office;

(b) proceedings instituted at the instance of the Government of Canada and in which the Government bore the costs of prosecution.

It is with respect to these fines only that a Minister may advise the Governor General.

118. ***Accounts Receivable.***—To meet the requirements of (*b*) of section 67, it is necessary that records of accounts receivable be examined in order to establish their accuracy. Billings and follow-up practices are also within the scope of the audit. It is a commercial practice to verify balances by direct confirmations from customers. This may not be applied invariably when public accounts are under audit, especially with respect to tax levies or other obligatory payments for which no service is rendered. Departmental concurrence ordinarily is obtained before debtors are asked to confirm amounts, but when a particular account is of audit concern, whatever action as may be necessary is to be taken regardless of departmental opinion.

119. Auditors will bear in mind that the Crown enjoys certain priorities and that statutes of limitations do not run against it. On the other hand, certain provisions in the Bankruptcy Act apply against the Crown.

120. ***Accounting Treatment of Uncollectable Accounts.***—Section 95 of the FA Act provides a scheme whereby one department may effect a collection when another is to make a payment to the debtor. Several Acts—an example is the legislation respecting seed grain loans—provide for waivers and adjustments of accounts receivable. All of these have well-established procedures, therefore what is here referred to is the new enactment by section 23 of the FA Act:

(1) The Governor in Council, on the recommendation of the Treasury Board, may, if he considers it in the public interest, delete from the accounts, in whole or in part, any obligation or debt due to Her Majesty or any claim by Her Majesty,

(a) that does not exceed five hundred dollars and has been outstanding for five years or more, or

(b) that does not exceed one thousand dollars and has been outstanding for ten years or more.

(2) The obligations, debts and claims deleted from the Public Accounts under this section during any year shall be reported in the Public Accounts for that year.

121. The text, when in Bill form, provided that the Governor in Council might "extinguish or delete". The Public Accounts Commitee, when examining the Bill, felt that the text went beyond the intent of previous recommendations of the Committee. For example, the Chairman remarked:

> Last year we did not mention at all 'extinguishing'. We meant deleting from the books and it kept the possibility of the Crown collecting at any time. We would delete them from the books but we would not extinguish the obligation of the debtor to pay at any time the Government found there was a possibility to collect. The word 'extinguish' did not come into it.

The section was amended, the spokesman for the Department of Finance indicating that it was being accepted "on the assumption that there is no continuing obligation to have a department follow up on such accounts".

122. ***Extra Earnings and Gifts to Public Employees.***—Outside his hours of duty, a civil servant may, subject to Executive rules, add to his income by performing services for others. However, during hours of duty he is expected to perform whatever duties the head of his department may require and extra compensation may be paid to him only when permitted by law. The control is ordinarily exercised by prohibiting charges to votes, but that, naturally, is ineffective when the service was performed for a commercial firm, another government, etc., and the cheque is issued by it. However, any such sum thus derived is public money whenever the recipient continues to receive the salary of his position. The courts take a dim view of gifts, etc., to public employees because bribery may be involved. The illustration now used is an unusual case; moreover, it involved a soldier, but it states the rule applicable alike to civil servants and members of the Forces. During World War II a sergeant stationed in Egypt was paid sums ranging from £1,000 to £4,000 in return for his sitting (in uniform) beside the driver of a non-public lorry as it travelled across a city. The purpose presumably was to minimize the risk of the lorry being stopped and searched while en route. In all, he received about £20,000. The Crown seized the money. The resulting litigation was an endeavour on the part of the soldier to recover it. He failed, it being held that:

> any official position, whether marked by a uniform or not, which enabled the holder to earn money by its use gave his master a right to receive the money so earned, even though it was earned by a criminal act. (*Reading* v. *Atty. General.*)

123. In certain circumstances it is not inappropriate for a department to distribute among its employees a voluntary gift received from an outside source when associated with services voluntarily rendered beyond the scope of employment. This is effective only when the Crown has not a right to demand payment although its employees may. *"The Ulysses"* case provides an example. This ship was wrecked off the African coast. Naval seamen voluntarily helped to salvage and guard the cargo until reloaded. The Admiralty gave consent to the men suing for compensation and the court made an award in their favour on the ground that the services performed went far beyond their normal duties as members of a ship's crew.

124. ***Conscience Money.***—Ordinarily such a receipt is small and no effort is made to trace the source. However, it has happened that senders subsequently sought credit. For example, a man, feeling that the income tax return prepared by his partner was wrong, sent anonymously an amount representing his share of what he considered was the sum payable. Later the income tax authority reassessed the partnership and added penalties, whereupon the partner claimed credit for the sum he had sent and it was allowed, after the payment was traced in its accounts. The illustration is not Canadian.

125. ***Collections by Other Governments.***—When a department or officer of another government acts for a Minister having the statutory duty to collect, a status of principal and agent may be presumed to exist, because the officials of the other government are not officers of the Minister. While the issue did not concern a revenue statute, an Australian case, *The King* v. *Murray,* explains:

> Federal jurisdiction may be entrusted to State Courts, and, if so, the judges of those Courts exercise the jurisdiction not because they are 'officers of the Commonwealth'—which they are not—but because they are State officers, namely Judges of the State. As an 'officer' connotes an 'office' of some conceivable tenure and connotes an appointment and usually a salary, how can it be said that a State judge holds a Commonwealth office? When was he appointed to it? He holds his position entirely under the State, he is paid by the State, and he is removable by the State, and the Constitution knows nothing of him personally, but recognizes only the institution whose jurisdiction, however conferred, he exercises.

When a statute envisages an officer of another government, not in his capacity as an officer of that government but as the person in whom certain powers are vested and on whom certain duties are laid by the statute, the employing government is not to be regarded as responsible for his acts (*Reference re Troops in Cape Breton*).

126. *Year-end Recording of Revenue.*—There is no statutory provision, comparable to that provided for expenditures by section 35 of the FA Act, for recording moneys received after March 31 as credits to Revenue of the old fiscal year. An assumption, therefore, is that the revenue accounts maintained by a department should be closed on March 31st, except to record amounts collected and credited to the Receiver General at outside points on or before March 31st.

THE AUDIT OF GOVERNMENTAL EXPENDITURES

127. Section 67 of the FA Act requires that examinations of accounts be of a nature to determine whether they have been faithfully and properly kept, and

money has been expended for the purposes for which it was appropriated by Parliament, and the expenditures have been made as authorized.

The Auditor General is directed by section 70 to report to the House of Commons "every case in which he has observed" that

(*a*) any appropriation was exceeded or was applied to a purpose or in a manner not authorized by Parliament,

(*b*) an expenditure was not authorized or was not properly vouched or certified,

(*c*) there has been a deficiency or loss through the fraud, default or mistake of any person, or

(*d*) a special warrant authorized the payment of any money,

and, in addition, any other case that he "considers" should be brought to the notice of the House of Commons.

128. ***Money Votes.***—Section 53 (already quoted in para. 91) of the B.N.A. Act requires that Supply Bills originate in the House of Commons, while section 54 declares "it shall not be lawful" for the House to appropriate any part of the Public Revenue unless it has been "first recommended to that House by Message of the Governor General". Thus the procedure to appropriate is: the Crown demands money, the Commons grant it, and the Senate assents to the grant; but the Commons do not vote money unless it be required by the Crown. The legislative process is not, of course, a matter of audit concern, but the foregoing is given to explain why the FA Act requires that the Public Accounts and the Auditor General's Report be laid before the House only.

129. A Bill for a purpose which will ultimately involve a charge on Consolidated Revenue Fund—for example, the salary of a special office—may originate in the Senate, but the appropriation provision will either be left blank or printed in italics

because of section 53 of the B.N.A. Act. After the House has inserted the financial provisions, the Bill will be returned to the Senate for its concurrence. Since the general Supply Bill never originates in the Senate, the annual Speech from the Throne invariably includes a paragraph addressed to the House:

Members of the House of Commons:

You will be asked to make provision for all essential services during the next fiscal year.

130. The Senate may reject a Supply Bill *in toto*, but it does not now claim a right to revise individual items. In 1918 a Senate Committee made a study of its fiscal powers, an extract from the resulting report and associated papers being:

When the House of Commons passes an appropriation or tax Bill it must be either for the sum recommended or for some smaller sum. When the Bill is for a smaller sum and the Ministry of the day continues to hold office it must be assumed that the Crown has assented to the reduction. (See Todd, vol. 2, p. 391.) When such a Bill goes to the Senate the amount mentioned in the Bill is therefore the sum recommended by the Crown. The Senate could not increase this sum without coming in conflict with the prerogative of the Crown to say what money is wanted (Todd, vol. 1, p. 689.) The foundation of all parliamentary taxation is the necessity for the public service as declared by the Crown through its constitutional advisers. The Senate therefore cannot directly or indirectly originate one cent of expenditure of public funds or impose a cent of taxation on the people . . .

131. ***Preparation and Consideration of Estimates.***—Section 5 of the FA Act names the Treasury Board to act as a committee of the Queen's Privy Council on all matters relating to Estimates; therefore, departments submit spending proposals to the Board. The procedure followed in settling items making up the ordinary Estimates generally is:

(*a*) Several months before the fiscal year ends, the Minister of Finance notifies heads of departments to compute and submit their requirements for the ensuing year.

(*b*) Each department's estimate of requirements is submitted over the signature of the Minister concerned and supported by such data as Treasury Board or the Minister of Finance may demand and by such additional material as the Minister concerned may consider desirable.

(*c*) The submissions are reviewed by Treasury Board. Ministers and officials may be called before it. The Board may reject or reduce a proposal, but items may be noted to the Cabinet for final decision.

(*d*) When the Estimates are in form satisfactory to Treasury Board, they are transmitted to the Cabinet for decision as to what sum shall be recommended to the Governor General.

(*e*) The Minister of Finance presents to the Speaker of the House of Commons a Message from the Governor General transmitting the Estimates. Upon the Speaker reading the Message to the House, the Estimates are tabled and the Minister of Finance moves that they be referred to the Committee of Supply for consideration.

132. Section 25 of the FA Act stipulates that all Estimates "be for the services coming in course of payment during the fiscal year", but no date is fixed by the Rules of the House for presentation. In England, a resolution was adopted in 1821 requiring that, whenever the House meets before Christmas, certain Estimates be presented before January 15th and the remainder shortly after. Generally, they are now presented during February. Canadian usage is to present the Main Estimates as soon as practicable after the Address in reply to the Throne Speech has been adopted.

133. ***Message of the Governor General.***—The Message of the Governor General, when submitting Estimates, is:

The Governor General transmits to the House of Commons, Estimates of sums required for the service of Canada for the year ending on the 31st March 19.... and, in accordance with the provisions of "The British North America Act, 1867", the Governor General recommends these Estimates to the House of Commons.

This Message has been described as

a mere formal act, which, in its nature, does not bind him, nor the Government to carry out all the objects for which votes of public money are asked. (*R.* v. *Lavery.*)

134. ***The Committee of Supply.***—This Committee consists of all Members of the House, but the Speaker does not preside and a degree of informality in debate is permissive. Canada adopted the practice from Britain, where its origin has been traced in these words:

The Committee of the Whole House on Supply has the name, but has none of the methods, of a Committee. It was established in the days of recurring conflict between Parliament and the Crown as a device to secure freedom of discussion on matters of finance. The debates in the House itself were recorded in the Journal which was sometimes sent for and examined by the King; and they were conducted in the presence of the Speaker, who in those days was

often the nominee and regarded as the representative of the Sovereign. By going into Committee under the chairmanship of a member freely selected, the House of Commons secured a greater degree of privacy and independence.

135. Standing Order 28 permits the House to go into Committee of Supply on Thursdays and Fridays without the Speaker putting a motion, but the Order stipulates that:

except by the unanimous consent of the House, the Estimates of each department shall be first taken up on a day other than Thursday or Friday.

Consequently, throughout the session items for various departments are called on other days of the week, although a Minister may simultaneously say "stand". His purpose is to have his Estimates available for consideration whenever Estimates are again under review by the Committee of Supply. The reason for formal 'opening' of each department's estimates is to give opportunities to Members to air grievances, and this they may do on a motion to consider supply. In order that opportunities may not be quickly exhausted, Opposition Members always urge that only a limited number of departments be called early in a session and that no motion be made with respect to some until the session is well advanced.

136. In the early years of the present century, the then Minister of Justice introduced the practice of having a departmental officer seated in front of him when his Estimates were under consideration. The practice is now general, but is an act of forbearance on the part of the House and does not extend to proceedings when the Speaker is in the Chair.

137. The Estimates book is not addressed either to the Speaker or the House. The Message of the Governor General is the formal notice. The book being only a compilation of demands for money, the House is under no obligation to follow any particular sequence when considering items. Usage is that an adjournment notice is given of the items the Government proposes to take up at the next sitting. The parliamentary procedure is:

(*a*) House officers prepare a motion for each item. This is proposed to the Committee of Supply by a Minister. The rejection of a motion would be considered cause for the moving of a vote of confidence in the Govern-

ment; but a Minister, if of opinion that an item may be reduced or dropped, may ask one of his colleagues to move an amendment to achieve that purpose—a mover cannot amend his own motion.

(*b*) When the Committee of Supply has considered all items, it reports the sum involved to the House. Thereupon the Committee of Ways and Means, on motion of the Minister of Finance, approves a resolution permitting the Minister to introduce a Bill authorizing the sum to be paid out of Consolidated Revenue Fund. The Bill also includes provision to borrow such moneys as may be necessary.

(*c*) After third reading of the Bill by the House, it is transmitted to the Senate, where it is considered and given three readings.

(*d*) The Bill is then returned to the Speaker of the House, who, in the presence of Senators and Members, proffers it to the Governor General for assent.

138. During consideration of an item, a Minister may give an undertaking to apply a vote in a certain way, or it may be that his Parliamentary Assistant, acting in his official capacity, indicates that a certain course of action will be followed. Unless incorporated into the text of the vote, no such commitment has legal significance, but the Government is under moral obligation to the House to apply the vote in a manner that honours the undertaking.

139. Many years ago in the State of Victoria, Australia, the solicitor-general took the view that resolutions of the Committee of Supply, reported and adopted by the House, made the amount legally available. The law officers in England disagreed, holding that money voted in committee of supply "is not available until it has been appropriated by an Act of the Victoria legislature". (Com. Pap. 1878, vol. 56, p. 905.) The rule is now firmly established that money is appropriated only when both Houses are in agreement and the Governor General assents.

140. ***Release of Supply.***—Section 26 of the FA Act contemplates that no cheques issue until "a warrant, prepared on the order of the Governor in Council, has been signed by the Governor General". The practice dates from Tudor days and is primarily

a safeguard to emphasize that the grant is to the Crown rather than to a department or service. It is a procedural step, so it may be regarded that a payment made before the warrant issues is subsequently regularized by the issue of the warrant order in council. It is, however, to be borne in mind that the order in council may be so worded that it does not 'release' all items. There have been occasions where the release of a particular vote was withheld or fractions only of votes released at a time.

141. ***Interim Supply Acts.***—These Appropriation Acts grant a fraction of the Main Estimates in order that the needs of the public service may be met until the annual Appropriation Act receives assent. The grant by an interim supply Act applies to every Estimate item. An expenditure charged to a vote does not become irregular by reason of the vote being later withdrawn or reduced, because an interim supply Act is complete in itself and remains operative regardless of the parliamentary fate of the remaining fractions of a vote. Should Parliament prorogue without passing the main Appropriation Act, whatever remains available under interim supply Acts may nevertheless be disbursed. (*New South Wales* v. *Bardolph.*) In this regard, Canadian practice differs from that of England where an interim grant of credits is regarded as lapsing if Parliament prorogues without an Appropriation Act. In some Commonwealth countries, practice frowns on an expenditure for a new service, etc., until it is approved by the Appropriation Act; no like usage is followed in Canada and costs for a new service are charged to interim supply grants.

142. ***Supplementary Appropriations.***—A 'supplementary' is obviously associated with an item previously submitted to the House whenever the words "further amount required" are used. Should a supplementary not repeat a qualifying phrase which forms part of the main vote, an auditor may wonder if it broadens the field. Unless there is a clear indication of legislative intent so to do, it is prudent to assume that it (*a*) supplements the vote, (*b*) partakes of its nature, and (*c*) is subject to the same limitations as is the main vote. On the other hand, should the text of a supplementary narrow the field in which expenditures may be made, any expenditure charged to the main vote prior to the supplementary receiving assent is regulated by the original text, but subsequent payments are controlled by as narrow an application of the text of the supplementary grant as is compatible with the

purpose. Conversely, when a supplementary's text enlarges the scope of the vote to which it is added, unspent balances in the main vote are controlled by the new text. Of course, a vote for a new object included in a supplementary Appropriation Act is regulated exclusively by its text.

143. A point of detail which is sometimes perplexing is when vote numbers in year-end supplementaries duplicate those of votes previously granted. There is no legal significance in the numbering—figures opposite votes are akin to side notes in statutes. Each session of Parliament is complete in itself and officers of the House number vote motions consecutively throughout a session without regard to the fiscal year involved.

144. Occasionally an auditor encounters the unusual situation of a year-end supplementary supply Bill receiving assent after March 31st. In such an event, close attention is to be directed to sections of the Appropriation Act because they may make exceptions from usual practice and sometimes vary, for the purposes of the Act, provisions in the FA Act.

145. ***Audit Notice of Estimates Details.***—The Estimates book laid before the House contains hundreds of pages of "Details" giving classifications by objects of expenditure. To what extent has audit notice to be taken when Treasury Board sets up allotments which do not conform to these Details? The answer is that Details are not part of the Appropriation Act unless a direct reference is made in the Act. Details are simply information provided to the House to support and explain the Crown's demands for Supply. The governing direction with respect to allotments is section 29 of the FA Act, the material words being:

> At the commencement of each fiscal year . . . the deputy head or other officer charged with the administration of a service . . . shall . . . submit to the Treasury Board through the Comptroller a division of such appropriation . . . into allotments . . . and when approved by the Board the allotments shall not be varied or amended without the approval of the Board, and the expenditures charged to the appropriation shall be limited to the amounts of such allotments.

This recognizes that needs sometimes change between the preparation of estimated requirements and expiry of the vote over a year later; but as Durell states:

> Morally, the Government must adhere to those details as far as is consistent with the interests of the public service, since its good

faith is pledged by the details given to Parliament, and the Comptroller and Auditor General would correctly bring divergencies to notice. ("Parliamentary Grants", p. 296.)

146. Sometimes a vote is so worded that application is controlled by the printed Details. To illustrate, a recurring vote of the Department of Agriculture reads:

> Subsidies for cold storage warehouses under the Cold Storage Act, and Grants, in the amounts detailed in the Estimates.

Any deviation from the specific listing of proposed recipients would be an irregularity, notwithstanding the power vested in Treasury Board by section 29. It is not obligatory that payments be made to those listed, but it is not permissive to add a new recipient by reducing payments to others.

147. ***Legislating by Use of Appropriation Act.***—An enactment in an Appropriation Act makes law just as effectively as any other statute. Maitland many years ago pointed out that:

> Parliament has not renounced and, according to our accepted theory of sovereignty, could not renounce the power of dealing with particulars, and in certain cases it still habitually exercises that power. The most important instance of this is to be found in the appropriation of supplies. ...it is effected by statute; the same formula is used as though a general law were being made: it is enacted 'by the queen's majesty with the advice and consent', etc. ("Constitutional History of England", p. 385.)

An Appropriation Act does not expire on March 31st; it is the power to spend that lapses, but that is because section 35 of the FA Act declares that:

> The balance of an appropriation granted for a fiscal year that remains unexpended at the end of the fiscal year shall lapse...

The text of an Appropriation Act is still part of the statute law and further payments may be made when a vote is so worded that a statutory charge is created. Generally, a narrow and strict interpretation is given to legislation effected by an Appropriation Act, but when a text makes an exception from existing legislation it is not obligatory that 'notwithstanding' or a like word be included in the text, although that is customary.

148. ***Application of Appropriations.***—An Appropriation Act grants the total sum represented by the collective amount of each of the items listed in the schedules. It also stipulates

that amounts expended be accounted for in the Public Accounts in conformity with section 64 of the FA Act. Thus an Appropriation Act attains two objectives: (*a*) to dictate the maximum which may be spent for particular purposes or services, and (*b*) to regulate the form in which an accounting is to be made. The quotation now given, while relating to an Appropriation Act of a province, describes constitutional usage with respect to such an Act:

> The supplies are granted to the Crown for the public service by the Legislature, but the expenditure is left to the discretion of the executive, which decides on the propriety of every transaction requiring the payment of public moneys, and the only limitation imposed on the executive by the constitution is that the disposition of the moneys must be in accordance with the votes. The executive is not bound to spend the moneys voted by the Legislative Assembly and granted by the Legislature, but every expenditure of such moneys must be made on its authority. The Legislative Assembly, which votes the supplies, has, it is true, a control over the expenditures, which is exercised through the committee of public accounts, but that control is restricted to enquiring if the moneys granted have been spent in accordance with the votes, and it does not encroach on the functions and authority of the executive. (*R.* v. *Waterous Engine Works.*)

149. *Specific Votes.*—In an ordinary Appropriation Act, the votes fall into two general classifications: specific and general. A vote for a contribution to a named organization is an illustration of a specific vote. In applying such a vote, departmental discretion is limited: to pay or not to pay; the authority may not be relied on to divert to another purpose because the purpose is

> to assign and stringently limit the money to the named purpose... The object of Parliament in such a case is financial, not regulative. (*Colonial Ammunition Case.*)

However, when the text of a general vote is such that the purpose of a specific vote might be attained by use of it, a department may charge the general vote. Should the resulting expenditure exceed the amount of the specific vote, there is an irregular, not an illegal, expenditure to be noted. Whenever a general vote is thus used, the decision is one of policy; consequently, an order in council or Treasury Board minute should authorize the action taken.

150. *General Votes.*—This type of vote is one where Parliament makes lump sum provision for the costs of a service and leaves to the Executive the selection of objects of expenditure,

so long as they qualify within the ambit of the text. An opinion given by the Minister of Justice in 1897 has repeatedly been accepted as stating the position. The vote under review read "immigration expenses", and the material part of his opinion is:

> I think that the Government may expend this vote for 'immigration expenses' in such manner as they may think best adapted to promote immigration. The question then becomes one of policy for the Government to consider, and for which the Government is responsible to Parliament. I see no reason why they may not, as a matter of law, grant out of the vote for immigration expenses a reward for past meritorious useful work, or a subsidy to encourage future work, if they think such a grant or subsidy would be promotive of immigration, and I think that their action therein is subject only to their answerability to Parliament.

151. Charges to votes are sometimes controlled by other legislation. To illustrate, shortly after Confederation the Minister of Public Works entered into an agreement for landscaping Parliament Hill, although there was no vote available for the purpose. The contractor sought the sum earned by means of a petition of right. He failed because of the section in the Public Works Act reading:

> Nothing in this Act shall authorize the Minister to cause expenditure not previously sanctioned by Parliament, except for such repairs and alterations as the necessities of the public service demand.

In the judgment of the Supreme Court is to be found:

> It seems to me that the most effectual way to carry out the intention of the legislature in this respect is to hold that persons claiming money, the expenditure of which has not been sanctioned by Parliament, cannot recover the same through a petition of right until Parliament has sanctioned the expenditure. (*Woods* v. *The Queen.*)

152. ***Grants by Statutes.***—Various Acts of Parliament include provisions for specified charges to be paid out of Consolidated Revenue Fund without further legislation. An illustration is section 65(2) of the FA Act. On the other hand, should the text read 'out of moneys provided by Parliament', a vote is necessary before a charge may be made.

153. Generally the power to charge unappropriated moneys is given when (*a*) it is desirable that the payment be removed from the arena of politics (the salary of the Governor General is the outstanding example), or (*b*) no total annual require-

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ments can be accurately forecast. In *R.* v. *Fisher* it was contended that appropriations of the latter type were irregular and unconstitutional. However, the Court decided that there was nothing *ultra vires* in using this method of appropriating as it had the effect of protecting the public interest "by preventing delays in payments and by making them certain".

154. The power to spend is controlled by the statute as a whole; no unlimited right is to be presumed to exist because a particular section enacts that expenditures be a charge on Consolidated Revenue Fund. In short, the spending power is regulated by the collective objects of the statute and is subject to all special requirements. To illustrate, section 34 of the Expropriation Act provides for payment of judgments against the Crown by stating:

> The Minister of Finance may pay to any person, out of any unappropriated moneys forming part of the Consolidated Revenue Fund of Canada, any sum to which, under the judgment of the Court, in virtue of the provisions of this Act, he is entitled as compensation money or costs.

Land was expropriated and after proceedings were commenced in the Exchequer Court the former owner, deciding to accept the amount tendered by the Crown, moved for judgment. The Court refused, holding that the parties were not seeking an adjudication as to value, but were asking the Court to give judicial sanction to an arrangement already made in order to obtain the benefit of the appropriation section of the Act:

> They should not ask the Court to become merely an instrument of convenience to them for the purpose of overcoming difficulties or delays of government departmental arrangements.

It was held that, to permit the statutory spending authority to be employed, the section

> contemplates a judgment of the Court, in virtue of the provisions of the Act, based upon an adjudication by the Court as to the compensation money to which the defendant is entitled. (*King* v. *Hooper*)

155. A matter sometimes of audit concern is when a cost might be charged either to a vote or to 'unappropriated money'. Normally this involves no more than an accounting decision because the expenditure will be regulated by the continuing statutory authorization regardless of the authority selected to charge. In other words, an auditor should not assume that a

statute is amended by a vote in an Appropriation Act unless the intent so to do is clearly indicated by the text of the vote. An illustration is a Manitoba case where a statute provided that the expenses of a commission "shall be paid monthly out of the Consolidated Revenue Fund of the Province"; however, the Government included an item in the annual Estimates listing $2,000 for a certain position, although the rate fixed by statute was $6,000. The holder of the position sued for the difference and succeeded, the Court taking the view that, as $6,000 had been fixed by a statute which simultaneously appropriated funds, something more than an indication of executive policy was necessary to amend the provisions of the statute.

156. Occasionally a statute fixes a maximum which may be disbursed during the life of the Act. A problem may arise by reason of an amount being also included in the annual Supply Bill. Unless the text clearly indicates an intent to supplement, the annual vote is to be regarded as a budgetary item only. That is, any expenditure charged to the vote should be regarded as simultaneously decreasing the amount available under the continuing statutory authorization. In the event of expenditures exceeding the sum voted in the Appropriation Act, the excess may be charged to the statutory authorization, but if the amount is substantial it is a subject to consider for audit observation. In other instances sums listed in the Estimates are prefaced by "stat" (statutory) but no corresponding amount is included in the Appropriation Act. This, of course, has no Appropriation Act significance and is done to enable calculation of the estimated grand total of expenditures in the coming year.

157. No warrant of the Governor General is necessary to 'release' a statutory appropriation because section 26 of the FA Act is operative only with respect to Appropriation Acts.

158. *Governor General's Special Warrants.*—Section 28 of the FA Act permits special warrants to be employed to make charges on Consolidated Revenue Fund:

> Where an accident happens to any public work or building when Parliament is not in session and an expenditure for the repair or renewal thereof is urgently required, or where any other matter arises when Parliament is not in session in respect of which an expenditure not foreseen or provided for by Parliament is urgently required for the public good . . .

159. A special warrant may issue only "when Parliament is not in session". These words have, for the purposes of section 28 only, a special meaning:

(4) For the purposes of this section Parliament shall be deemed to be not in session when it is under adjournment *sine die* or to a day more than two weeks after the day the accident happened or the other matter arose.

160. Section 28 is to cope with emergency situations when an expenditure is "urgently required". In 1896 Parliament was dissolved before Supply was granted. The question subsequently arose whether warrants could issue to pay civil service salaries. Sir Oliver Mowat, then Minister of Justice, gave what is commonly called 'the Mowat Opinion'. It includes:

I think that the payment of the employees mentioned in your letter is 'urgently and immediately required' for the public good, within the meaning of the said enactment, and that, under the circumstances which have occurred, and the consequent present condition of public affairs, the Governor in Council may properly on the reports mentioned, order a special warrant to be prepared to be signed by the Governor General, for the issue of the amount estimated to be required.

This opinion was relied upon when like situations arose in 1926 and 1940.

161. The Government decides when money is urgently needed. It is answerable to the House of Commons for the decision taken. The regularity of a special warrant is of audit concern only when (*a*) Parliament is in session at the time the need arose, or (*b*) an appropriation appears to have been available to which to charge the cost of the object of the warrant. To illustrate, a special session was called to settle various matters before a colony became part of the Union of South Africa. At the close of the session the Assembly adopted a resolution declaring that, for indemnity purposes, the session be treated as an ordinary session. No appropriation was made to defray the extra cost, but after prorogation a Governor's warrant was issued under section 20 of a statute—the relevant language was similar to that of subsection 1 of section 28 of the FA Act. It was held that the issue of the warrant was an abuse of power:

Even if the Governor were able to come to the conclusion that this extra payment . . . was necessary in the public interest, yet the fact would remain that the necessity arose while the House was in session, and should have been dealt with in Parliament by means

of a bill. Necessary expenditure cannot be met by special warrant, unless it occurs when Parliament is not in session; the terms of section 20 of the Act are perfectly clear upon that point. The breach of the law has therefore been proved.

But the Court decided that it was the 'High Court of Parliament', not a court of law, that should decide what should be done. That is why the Auditor General is required, by section 70 of the FA Act, to report all warrants issued. The reason is solely to make certain that Parliament is informed. Practice is to have the amount of any warrants issued ultimately ratified by means of Estimates items, but that is not mandatory.

162. ***No Third Party Rights are Acquired by a Vote.***—No audit obligation requires that attention be drawn when hardship is suffered by reason of a department declining to pay. Section 31 (1) of the FA Act declares that:

> No charge shall be made against an appropriation except upon the requisition of the appropriate Minister of the department for which the appropriation was made, or by a person authorized by him in writing.

Thus, in every instance it is a Minister who is to be regarded as deciding what expenditures will be made, and he is answerable only to the House for the application given to all votes administered by him. The point in issue in *The Queen* v. *Lord Commissioners of the Treasury* illustrates. A vote provided a sum to defray charges

> for prosecutions at assizes and quarter sessions, in England, formerly paid out of county rates.

Certain prosecutions took place, and after costs were taxed by officers of the court, the county treasurer paid the bills. These he transmitted with the usual vouchers to the Treasury in order that the county might be reimbursed. The Treasury rejected or reduced fifty-one items. In proceedings to compel the Treasury to reimburse the county, the court refused relief, although

> . . . the court was clearly of opinion that the Treasury had been quite wrong in their proceedings, and yet refused to grant a *mandamus*. Their reason was that there was no statutory obligation upon the Treasury to issue a minute to pay the money in the manner desired by the prosecutors, but that their duty was merely to advise the Crown whether the minute ought to be issued or not. (Robertson's "Civil Proceedings by and against the Crown".)

163. ***Recovery of Illegal Payments.***—In the previous paragraph it is pointed out that a Minister is in complete control over the charges to votes. However, charges must be permissive, otherwise there is a duty to recover. *The King* v. *Toronto Terminal Railway Co.* provides an illustration. In 1915 the Government negotiated for land on which the postal building at Toronto Union Station now stands. Involved were certain rights of way, etc., the Government agreeing to reimburse for municipal taxes and did so. In 1940 adjacent land was expropriated and it was then discovered that, over the years, the Department of Public Works had made, as a charge to a general vote, tax reimbursements on certain lands without being obligated by the agreement so to do. The suit was to recover the money. The Crown was successful:

> Parliament provided funds to make lawful payments, i.e., payments authorized by the lease. That authority cannot be widened by the Department.

164. ***Recovery of Overpayments of Salaries, etc.***—A federal statute long since repealed provided that inspectors be appointed by a Board of Licence Commissioners and that their salaries "shall be fixed by the Board subject to the approval of the Governor in Council". The Act directed that costs of administration be paid out of the Board's revenues. The Board made appointments, fixed rates and reported to the appropriate Minister. He, however, delayed making a submission to the Governor in Council with the result that rates put into effect were higher than those ultimately approved by the Council. The Board members were required personally to absorb the difference and they sought relief. They failed:

> The salaries . . . could only become a charge . . . after the sanction and approval of the Governor in Council of such salaries had been obtained . . . any sums of money paid . . . without such approval were paid illegally, and the appellants must take the consequences of their illegal action. (*Burroughs* v. *The Queen*)

165. What more frequently happens is an overpayment due to an accounting or administrative error without any intent to flout either the law or a direction of the Executive. An administrative duty exists, of course, to recover, but ordinarily in the Audit Report no notice need be taken if the amount is recovered within the year in which the error was made. If full recovery is not effected in the year but a plan of collection is in effect that should recover the amount within a reasonable time, audit concern is primarily with respect to safeguards

introduced against repetition of the mistake. However, where no real effort is made to recover, audit notice must be taken. Sometimes an Executive order issues with its purpose that of relieving a department from the duty to recover. Only in certain circumstances may such an order be recognized as it normally is in conflict with section 23 of the FA Act. An illustration of a case where such an order may be recognized is where its effect, in fact, makes a special adjustment of pay rate in the period when overpayments were made. It follows that such an order is effective only when the pay rate is controlled by the authority which issues the direction to waive recovery.

166. *Interdepartmental Transactions.*—A department sometimes acts as the agent of another. Expenditures incurred should be reflected in the accounts of the department for which the services were performed. The rule is that:

> if additional expense is entailed in performing a duty (outside of its own sphere) for another department, the extra expense ought clearly to be borne by the votes of the department for which the service was rendered, and that the fact that this might entail the taking of a supplementary estimate by that department should not prevent the adoption of the only correct course of action. (1892 British Public Accounts Committee)

Such an account presents two risks: (*a*) a Chief Treasury Officer may have two groups of Audit Office staff examining his accounts, or (*b*) a misunderstanding may take place in the Audit Office. In order to avoid these, it is Audit Office practice that the supervisor, reporting on the appropriation which bears the cost, make certain that examinations are made by the supervisor having the audit of the agency department's accounts.

167. *Control by Means of Time Factors.*—Parliament maintains a control over the Government by segregating expenditures into fiscal periods:

(*a*) section 25 of the FA Act directs that Estimates be for services coming in course of payment during the fiscal year,

(*b*) section 32 stipulates that no payment be made unless work has been performed or materials supplied,

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(*c*) section 35 cancels unexpended balances in appropriations at the year-end, and

(*d*) section 36 requires year-end settlement of accountable advances.

It is in the public interest that the Crown settle accounts payable, therefore the FA Act does not prohibit charges to votes with respect to obligations incurred in previous years. But any scheme to pay before a debt matures is constitutionally objectionable because that would weaken the future financial control of the House over the Crown. There are, of course, exceptions where custom or trade practice is to prepay. An example is a subscription to a periodical.

168. Administrative services go on from year to year, the March 31st cut-off being simply to fix a date for an accounting of stewardship to Parliament. It is not to be presumed in the audit that, because a power to spend lapses on March 31st, all inventories must simultaneously be exhausted, nor is it objectionable when a department purchases, as a charge to the old year, supplies required for spring activities. To illustrate, it is an act of prudent administration on the part of the Department of Agriculture to make certain before the end of March that it has the necessary equipment, seed, etc., for its spring seeding operations, but a different view would have to be taken were outlays made in March for harvesting supplies and equipment.

169. The audit is founded on test examinations. However, because of the special significance of year-end expenditures, an auditor is expected to scrutinize year-end transactions, particularly when expenditures are abnormally large in the last sixty days. Also, when the lapse in a vote is unusually small, transactions in the opening months of the new fiscal year should be scrutinized to ascertain whether any of the payments relate to services rendered in the old year.

170. ***Date of Delivery.***—A problem sometimes is: When are materials supplied? That is, may delivery be taken in transit, or at a factory, or at a place other than where the contract calls for delivery? Here the nature of the contract, the agreed place of delivery, the status of possession, etc., should be reviewed. An essential is that control over future use is

wholly exercisable by the Crown; again, audit interest is attracted when a contract's provisions are varied to the end that a certificate under section 32 may be given at an earlier stage than was originally provided.

171. It has long been accepted that, when for unforeseen reasons delivery in a fiscal year could not be made, a special form of delivery may be authorized by Executive order. Montpetit, in his "Les Cordons de la Bourse", gives an illustration. Structural steel was fabricated in Winnipeg and was ready for delivery in March, but unusual climatic conditions made it impracticable to move the steel to a project; the Governor in Council authorized the contract to be varied by permitting acceptance of the steel after it was piled separately from stocks of the company and inspected.

172. Another exceptional situation where practice in Commonwealth countries permits a degree of freedom is when no provision is being made in the new fiscal year to liquidate outstanding liabilities with respect to a transitory vote. It is assumed that Parliament having appropriated for the total cost, an advance payment on account may be made before the accounts are closed, provided appropriate safeguards are associated therewith to ensure return of any balance not earned. A test of the regularity of such a payment is that given by Durell:

> The determining factor is, in fact, the question as to whether the transaction is practically final and irrevocable, and it is no longer possible for either party to recede from their bargain. ("Parliamentary Grants", p. 411.)

173. In cases such as the foregoing, the best safeguard against abuse is to have Executive concurrence before any departmental action is taken, because it is the Government that is collectively answerable to the House of Commons with respect to application given to section 32 of the FA Act.

174. ***Refunds to Votes.***—Departments frequently perform extraneous services for other governments, organizations, etc., on the basis that costs incurred will be reimbursed. Practice in some Commonwealth countries is to open a suspense account. In others, including Canada, normal practice is to charge a vote in the first instance and thus keep operations within parliamentary control and also that of the Comptroller of the Treasury. A risk of such a transaction is that a vote is supple-

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mented by a sidewind, due to a reimbursement including certain costs for which provision was made in the vote. Therefore, Treasury Board directed in September, 1952, that section 37 of the FA Act be applied in this manner:

(*a*) a recovery of an overpayment, a refund of an accountable advance, or a repayment for the costs of services rendered which while coming within the ambit of the vote had not been provided for in the Estimates, may be credited to the appropriation,

(*b*) a payment for a service rendered for which the appropriation was intended to provide and which is provided for must be credited to Revenue.

175. ***Donations and Ex Gratia Payments.***—Where a vote clearly indicates an intent to make a contribution to a named organization or person, no Executive order is required before a department may pay; but an order is to be expected where the selection of recipient is departmental.

176. When the Auditor General is instructed, under section 71 of the FA Act, to inquire into and report

on any person or organization that has received financial aid from the Government of Canada or in respect of which financial aid from the Government of Canada is sought

such an examination is 'special' and for an administrative rather than a parliamentary purpose.

177. An *ex gratia* payment is one where no liability to pay is admitted but is made as an act of grace. Payment is a policy decision which an auditor should expect to be evidenced by an Executive order, because the payment does not lend itself to automatic control through the application of section 32 of the FA Act. A common type is the settling of a claim arising out of a traffic accident where the Crown denies liability but the sum involved in litigation costs might exceed a quick settlement payment. Unless legislation requires, no special reference need be made in the Public Accounts to properly approved *ex gratia* payments. Sometimes a vote appropriates a sum to be distributed among various persons as an act of compassion or for other reason. This does not create a 'right' to the money:

If a sum is appropriated to meet purely *ex gratia* payments, sanctioned for payment by the Minister for Finance, the appropriation does not give a right to the payments, which remain, as before, merely *ex gratia* payments. (*Leen* v. *Irish Free State.*)

178. *Nugatory Payments.*—These represent a class of charges which call for audit scrutiny when observed in an examination. Usually they represent settlements associated with the cancellation of an agreement before the purpose is fully implemented. An illustration is where a manufacturer undertakes to produce something but either the need ceases to exist or for other reason it is decided that the arrangement be terminated before delivery is made. The amount thus expended is a nugatory payment, and the House of Commons may be interested from the viewpoint of 'merit' as well as the considerations which influenced the making of the original contract. A concurring Executive order is to be expected wherever the amount involved was so substantial or surrounding circumstances so exceptional as to justify public interest in the payment. Some statutes regulate the action to be taken for their purposes; an example is the Defence Production Act.

179. *Grants to Other Governments and Public Authorities.*—Occasions arise when it is necessary to consider the extent to which payments may be made for objects in the provincial sphere. If Parliament has clearly indicated its consent, the payments present no audit problem save to make certain that they have conformed to the grant. However, it can happen that such a payment is made a charge to a general vote and no indication had been given to the House of an intent to undertake or participate in a project within the provincial sphere. In that event, it is a transaction which comes within the ambit of the 'call attention' direction in section 70 of the FA Act.

180. Some grants to public authorities may be unrestricted as to future application; an illustration is a grant, in lieu of taxes, to a municipal authority, which may apply the money as it sees fit. The audit of such a transaction need not go beyond the examining of records associated with the decision to pay. A different situation exists when the payment is of the nature of a grant-in-aid for a particular purpose. In these circumstances a duty is on the department requisitioning for a cheque to satisfy itself that the moneys are applied to the purpose. The Audit Office duty is primarily to observe the efficiency of departmental administration because the obligation is on the department: (*a*) to challenge any irregular charges by the recipient authority, and (*b*) to effect recovery of irregular or excessive payments.

181. ***Payments to a Special Account.***—Parliament sometimes establishes special accounts within Consolidated Revenue Fund to which credits are made. A 'holdback' account created by section 40 of the FA Act is an example. Despite the fact that no actual disbursement may immediately take place, the charge to a vote in order to credit such a special account is an expenditure. The position in Canada is similar to that existing in Australia where it was decided that:

> The Commonwealth has authority to appropriate money out of the Consolidated Revenue Fund for a specific purpose, and money so appropriated, although not actually disbursed, is "expenditure" within the meaning of section 89 of the Constitution. (Headnote, *New South Wales* v. *The Commonwealth of Australia.*)

182. ***Interest Payments.***—An Exchequer Court decision, *Roger Miller & Sons* v. *The King*, provides illustrations of judicial discrimination between claims for interest. The construction contract involved was on the basis of cost plus 7½% and stipulated that no interest on capital employed or on borrowed money was to be included in the cost of the work. There was the usual provision for monthly submission of progress claims and payment of them within 15 days by the department. More than once during the life of the contract the vote became exhausted and the contractor continued construction by means of bank loans. The Government voluntarily reimbursed the interest cost of such loans. However, the department sometimes delayed making payments when it had funds available and again the contractor financed by bank borrowings. The Government refused to accept these interest costs, therefore a claim before the Court was for this interest. It was allowed:

> The contractor was bound to take advantage to the extent of his ability of all discounts available, and if he was unable to do so, he was obliged to notify the engineer of his inability in that regard, and his reasons therefor. It is a fair inference from this that if the contractor was to use borrowed capital to obtain discounts for materials purchased for the works, he should be paid for the cost of such materials as and when due under the terms of the contract and should not be obliged to bear the expense of extending a loan originally made for the particular purpose of obtaining such discounts.

Auditors will observe that the purpose of the loan as described in the last few words influenced the court.

183. The contractor simultaneously sought recognition of two other claims for interest. Work was suspended in November

1919 and re-commenced under a revised contract in August 1920. The contractor claimed interest on the holdback during the period from November to August. This was refused on the ground that the holdback

was in the nature of capital employed in the cost of the work and upon which the contractor was not entitled to interest under the terms of the contract.

A security deposit of $50,000 had been made in accordance with the provision of the contract. $40,000 was returned in November 1925 and four months later the remaining $10,000. A claim was for interest on the $10,000 during the four months. This also was rejected:

this deposit cannot be regarded as a portion of the cost of the work, as defined by the contract; it was in the nature of a guarantee for the carrying out of the contract, and was a condition which the contractor had to fulfill. In the absence of any provision in the contract whereby the Crown was to pay the contractor interest upon deposits of this character, I do not see how this claim can be allowed.

184. A marginal type of case is where a purchase is made on the basis of instalment payments and the agreement provides for interest on any balance outstanding. In the early part of the present century, such an undertaking by a department was regarded as constitutionally objectionable, and a statutory commission was once directed to return musical instruments it had purchased on an instalment, with interest, basis. Current thought is less restrictive due to the changes in commercial practices. Such an agreement is, of course, to be regarded in the audit as subject to section 38 of the FA Act:

It is a term of every contract providing for the payment of any money by Her Majesty that payment thereunder is subject to there being an appropriation for the particular service for the fiscal year in which any commitment thereunder would come in course of payment.

185. ***Payment of Taxes.***—Section 125 of the B.N.A. Act declares that: "No lands or property belonging to Canada or any Province shall be liable to taxation". Auditors will observe that the text prohibits levy, not payment; consequently, a payment is not an irregularity but, because it is voluntary or *ex gratia*, the paying department is expected to justify its action, unless that be made unnecessary by some enactment indicating a willingness on the part of Parliament to accept such a charge to a vote.

186. School taxes are sometimes levied by an authority other than a municipality receiving a grant in lieu of taxes and departments make payments. While it is a decision of a court in Scotland and treats with harbour dues, an observation in *Wick Harbour* v. *The Admiralty* is explanatory of the power to make such payments:

> Under section 28 of the Harbours, Docks and Piers Clauses Act 1847, vessels in His Majesty's service are exempt from rates and dues. It was suggested, rather than urged, by the Lord Advocate, that in virtue of this statutory exemption no binding agreement for payment of rates and dues can be made on the part of a Government department. But a Government department, though not liable, may, subject to the provision of the money by Parliament, pay harbour rates and dues just as it pays local rates. And if it may pay them I think it may undertake to do so.

Any such payment is a decision of public policy and should be approved by an Excutive order. It belongs to the class of decisions "which would be likely to provoke a discussion in Parliament", using words in *R.* v. *Waterous Engine Works* to illustrate decisions requiring action by a Lieutenant Governor in Council.

187. Conversely, there are instances where the shoe is on the other foot. An illustration is a case where the Government expropriated land and applied to have title recorded in a Land Titles Office. Liability to the fee was contested but it was held (*Atty. Gen. Canada* v. *Registrar of Land Titles, B.C.*) that as the Expropriation Act gave the Canadian Government the strongest possible title without any necessity to register it, it was not being taxed but was being charged a service fee and should pay. To illustrate the dividing line, the ordinary motor vehicle licence is a tax and cannot be enforced against the Government of Canada, but it is a public convenience to have a record maintained and plates affixed to the vehicles. Therefore, it is regarded that it is proper that the Government pay for the cost of plates and recording of numbers, etc.

188. In the course of audits, it will be repeatedly observed that expense claims include payments of provincial or municipal meal, gas, etc., taxes. While the Government has a legal right to recover, it can happen that the cost of assembling and proving the claims would exceed the recovery. Should an Executive order give a direction not to claim recovery, that may be regarded as adequate; on the other hand, if a depart-

ment acts independently or seeks recovery from some only of the taxing authorities, audit notice is to be taken. Of course, when the sum involved is easily established and no effort to recover is made, it is a "case" within the ambit of the closing direction in section 70 of the FA Act.

189. *Taxes on Expropriation.*—Expropriation vesting title in the Crown, no tax liability exists from that date. Taxes levied but not paid, upon acquisition by the Crown, are an encumbrance to be removed by the previous owner in order to obtain compensation under section 23 of the Expropriation Act. If the year's taxes were paid prior to expropriation, the owner has no right to demand that the Crown agree to pro-rating the amount paid over the respective periods of ownership. Any consideration which may be given is incorporated into the 'compensation'. On the other hand, providing it has funds available, a department may negotiate a settlement with the previous owner, and it may be agreed that the Government will settle directly with the taxing authority.

190. *Taxes on Leased Property.*—When use of real estate is acquired by lease, the agreement sometimes provides that the Crown will pay all, or a share, of the municipal taxes during the period of the lease. Strictly regarded, the amount is part of the rent, although the sum may be paid directly to a municipality, with the regularity of the tax payment controlled by the power relied on to lease.

191. *Charges for Municipal Services.*—In 1942 the Supreme Court of Canada was requested, by a reference, to advise the Government whether the City of Ottawa had power to levy rates on legation property owned by other governments. The subject of service charges was not specifically before the Court, but the Chief Justice remarked:

> The taxes in question may be broadly divided into two classes: those which constitute payment for services rendered for the beneficial enjoyment of the particular property in respect of which they are assessed, and those which are levied for general purposes. As regards the first class, water rates may perhaps be taken as typical. There is, of course, no obligation upon a State which receives an envoy from a foreign State to provide him gratuitously with water, or electricity, and it would be generally agreed that where a tax is in the nature of the price of a commodity, the person enjoying the benefit of that commodity ought to pay the price.

This distinction has long been drawn by departments and is usually extended to include levies for local improvements.

Executive regulations made under the authority of section 39 of the FA Act now control departmental commitments for water, gas, electricity, snow removal, garbage collections, etc., by municipal or other public authorities.

192. ***Taxes Outside of Canada.***—Section 125 of the B.N.A. Act is of no assistance when the property assessed is located outside of Canada. Ordinarily, reciprocal arrangements exempt property held for the use of the diplomatic services. Moreover it can happen that, in a Commonwealth country, there is a statutory exemption due to the fact that title is in the Queen—it all depends on local legislation. To illustrate, in the *Reference on Legation Property,* the Court considered statutes of Ontario, and held that the lands held for the use of the United Kingdom High Commissioner were not subject to tax because the statutes exempted Crown property from tax liability.

193. ***Payment of Law Costs.***—When the Department of Justice retains a lawyer to represent a department in court, he may present two accounts: (*a*) costs as taxed by the court, and (*b*) costs as between solicitor and client. The first account will represent charges for those services which are regulated by Rules of Court; the other will be for other necessary services performed. By Executive order, legal accounts are to be reviewed by the Department of Justice before payment is made. However, where selection of counsel may be made independently of the Department of Justice, it is not obligatory that the accounts be reviewed by it before payment. An illustration of an exception is counsel retained by a royal commission under the authority of section 11 of the Inquiries Act.

194. ***Selection of Payee.***—The Crown, like anyone else, has a duty to make certain that payment for a service is made to the person entitled to the money. A recent illustration is a case involving a United Kingdom Government department. During the war a land roller was requisitioned and payment was made to the person in possession. It was later established that he was not the owner. The court directed that a second payment be made.

195. Whenever any doubt exists as to the person entitled, the appropriate action for a department to take is to act under a section in the Exchequer Court Act which provides that upon payment into that Court:

the Crown shall be *ipso facto* released and discharged from any and every liability whatsoever regarding the moneys so paid into court, and any person claiming to be entitled to the whole or any share of the moneys so paid in shall be at liberty to institute an action in the Exchequer Court by way of petition for the recovery of the same . . .

196. ***Powers of Attorney.***—Where an assignment is permissive, an Executive regulation requires that any power of attorney which may be recognized by the Comptroller of the Treasury shall "be in a form approved by the Department of Justice". An audit problem may be: What is to be done when an assignment is overlooked? It is doubtful if a department or a paying officer is obligated to act upon any power of attorney, even when presented by use of an approved form. In *Willcock* v. *Terrell* it was said:

I fail to see how this Court can make an order upon the paymaster general, who is a mere subordinate officer of the Treasury . . . the order could not be made upon the lords of the Treasury themselves, to pay by the hands of the paymaster general.

Should it be decided that, nevertheless, a second payment be made, it is an *ex gratia* payment which requires an Executive order.

197. Cases may sometimes arise where it is doubtful if a power of attorney is still in effect. The proper action is to seek an opinion of the Department of Justice. Ordinarily, the position is as Alcock's "Powers of Attorney" states:

Apart from express revocation, a power is determined by certain events, such as death, lunacy, or bankruptcy, by acts of the principal inconsistent with its continuance, by the extinction or exhaustion of the power, or by the expiry of time. This is usually known as the doctrine of implied revocation.

Contracts

198. The Executive, subject to such limitations as Parliament may impose, negotiates all financial commitments:

The responsibility of entering into contracts for the performance of any work or service, the undertaking of which has been or may afterwards be authorised by Parliament, properly rests upon the Executive alone. (Todd, "Parliamentary Government", vol. II, p. 179.)

Various statutes regulate the making of contracts and, in turn, section 39 of the FA Act vests in the Governor in Council a power to make regulations with respect to the negotiating and award of contracts and, "notwithstanding any other Act", the Governor in Council may direct

> that no contract by the terms of which payments are required in excess of such amount or amounts as the Governor in Council may prescribe shall be entered into or have any force or effect unless entry into the contract has been approved by the Governor in Council or the Treasury Board.

This includes contracts for works, supplies and services. The audit obligation is (*a*) to survey the efficiency of departmental practices and procedures, (*b*) to establish that statutory directions are respected, and (*c*) to draw attention to any case where the public interest appears to have been inadequately safeguarded.

199. *Calling for Tenders.*—The purpose of invitations to tender is to obtain the benefit of open competition. In some cases it is not necessary that advertising in the public press be utilized, but whatever plan is adopted, the aim should be to secure the benefits of competitive bidding.

200. Section 36 of the Public Works Act is applicable to departments generally, and it provides that in cases where

> the work is one of pressing emergency in which delay would be injurious to the public interest

an award of contract may be made without inviting tenders by public advertisement. Whenever such a contract is under review, an auditor should, among other things, consider whether the 'pressing emergency' is a consequence of administrative tardiness. Generally, but subject to any special legislation, an Executive order is to be expected when an award is made without calling for invitations for tender on the ground of emergency. Section 17 of the Defence Production Act is an illustration of an exception. It permits the Minister to enter into contracts without the approval of the Governor in Council if

(*a*) in the opinion of the Minister, the contract must be entered into immediately in the interests of defence,

(*b*) the estimated expenditure, loan or guarantee does not exceed $25,000, or

(*c*) competitive tenders have been obtained and the lowest tender, involving an estimated expenditure not exceeding $50,000, is accepted.

201. Sound administrative practice requires that tenders be received in 'sealed' form, the reason being:

> to prevent leakage (or what is nearly as damaging—suspicion of leakage) of information. (Macmillan's "Local Government Law", vol. 12, p. 423.)

A bidder may withdraw his offer up to the time tenders are considered; thereafter a tender may be withdrawn only with the consent of the Minister or deputy head.

202. Words such as 'lowest or any tender not necessarily accepted' are generally included in invitations for tenders. The purpose is to preserve freedom in selecting a contractor. While price is an important factor, British Public Accounts Committees have more than once urged that departments satisfy themselves as to the financial status of bidders before awarding contracts, and that bids should be laid aside whenever the bidder has an unsatisfactory record as a public contractor. Where the low bid is not accepted, the reason therefor is of audit interest. If it be a good one, the matter is not a subject for comment, because value in relation to cost is the overriding consideration and administrative judgment is entitled to respect. Moreover, as an American writer aptly points out, while competitive bidding tends to keep prices down, nevertheless

> where the contract price is too low to promise any profit for the contractor or indicates a certain loss, this seeming advantage is often turned into a disadvantage on account of skimping by the contractor on the work in an effort to prevent a loss or to make a profit. Work taken at a low price must be given rigid inspection and the Government representatives on the work must be constantly vigilant; this often leads to disputes and appeals. The accomplishment of the work is thus often delayed and the indirect costs increased. (Graske, "The Law of Government Defense Contracts", p. 123.)

203. One purpose of directions to invite tenders is to afford an opportunity to those who are interested to make known their availability; another is to establish a competitive price scale. Ordinarily, Parliament imposes two other requirements: (*a*) the contractor provide satisfactory security for due performance and (*b*) where the amount is substantial or a question of policy is involved, the Governor in Council or Treasury Board authorize the contract award. The latter is a safeguard against the risk of partiality being practised were decision left to a Minister. An auditor may assume that if statutory safeguards are not more restrictive than the foregoing, the Executive

enjoys the freedom of an individual. Should the contract later be expanded by the addition of new work, it is discretionary with the Governor in Council whether or not new competitive bids be secured, provided the project retains the character of that for which bids were invited.

204. Sometimes identical prices are quoted. The making of a selection is rarely of audit interest because no question of added cost to the public is involved. Canadian practice of treating such a selection as an exercise of departmental discretion differs from that of the United States where an award is made by drawing lots. The difference in practice seems to be due to the fact that a United States head of a department is not answerable to Congress in the same way as a Canadian Minister is to the House of Commons.

205. When all offers are rejected, a contract is sometimes negotiated with one of the bidders. If the resulting contract calls for a payment no greater than the lowest *bona fide* offer, an auditor need consider only the reason why a particular contractor was selected; but should the contract be founded on a material variation of the advertised requirements, audit consideration is whether departmental action was of a character as to protect the public interest and if the action taken was permissive.

206. ***Contract Conditions.***—The terms and conditions of a contract should truly reflect the essentials of the invitation to tender, the conditions of the authorization to contract, and the requirements of statutes applicable. A department may not, by means of special clauses in an agreement, contract itself out of a statute. When a contract contains a clause empowering an officer to alter, enlarge or diminish the works specified, the clause should be strictly interpreted because a departmental officer lacks authority to agree to vary conditions of a contract approved by Executive order or by his Minister. Neither is the Crown bound by errors or inadvertences of its officers:

> An order in council authorizing . . . a contract for the removal of clay, sand and gravel, tendered for at a given price, does not carry with it any authority to add anything to or to vary the scope of the order beyond the ambit of the order in council. The introduction of a clause purporting to be part of the authorized contract, throwing upon the contractor the obligation to remove at the same price material covered by another class . . . is absolutely beyond the authority conferred by the order in council and is also beyond any offer express or implied in the tender of the suppliant. (*National Dock and Dredging Corp.* v. *The King.*)

207. Situations arise where changes in specifications and work requirements necessitate amendments to a contract. Construction contracts generally provide that

> the contractor has, before execution, investigated and satisfied himself of everything and of every condition affecting work to be executed and labour and material to be provided, and that the execution of this contract by the contractor, is founded and based on his examination, knowledge, information and judgment.

Bidders sometimes rely on, for example, test borings and reports by departmental officers, but these are later established not to have been truly descriptive, although made with reasonable care and technical skill. As a result, the Minister may decide to make a compassionate adjustment. Audit interest generally is in observing application given to Executive regulations on the subject.

208. In examining payments for extras, an auditor will observe what safeguards were taken in authorizing them, since they are departures from the original contract, though technically not classed as transactions outside the terms of the contract. If different rates are introduced, a new contract is to be regarded as in effect and the question of power so to contract has to be reviewed. Another type of variation to be explored is when an extension of time to complete is granted. Treasury Board concurrence is to be expected where the contract was awarded to a particular contractor because he was regarded to be best able to do the work or make deliveries by a named date at a certain price.

209. Unless a statute or the text of a contract indicates that words and phrases are to be given a particular meaning, trade customs may be regarded by an auditor as applicable. As a rule, the expression 'more or less' has for its purpose that of ensuring that neither party will be entitled to relief on account of a deficiency or surplus, except in a case of so great a difference as to raise the presumption of fraud or gross mistake in the essence of the contract. The words 'about' or 'approximately' should be tested by trade usage. 'As is and where is', when no representation is made as to quality or quantity, is generally governed by the rule of *caveat emptor* (let a purchaser beware). The expression 'act of God' is often encountered in contracts. Its meaning, in relation to a particular contract, is a question of law, but the following, taken from United States Government practice, may be helpful:

Lightning, earthquakes, great droughts, tornadoes, high winds, extraordinary floods, a storm or tempest of extraordinary violence, waterspouts, violence of the seas, and other like disturbances of the elements are usually regarded as acts of God, but this is not true of storms and weather conditions which are not unusual in character and which could have been reasonably anticipated.

Floods and freshets of an unprecedented or extraordinary nature are acts of God in a legal sense, but they are not such where they could have been anticipated by ordinary foresight and prudence.

Constant, unusual, or heavy rains, and an ordinary flood or freshet, cannot of themselves be classed as a providential hindrance.

Freezing and zero weather, at a season of the year when such weather is naturally to be anticipated cannot be brought within the definition of the term 'act of God' . . .

210. ***Sub-contractors.***—Contracts frequently provide that, with the consent of the Government, the contractor may sub-contract. Normally, this does not establish a right whereby a sub-contractor may make a direct claim against the Government for services rendered. He is not a party to the contract between the prime contractor and the Government (*Pearson* v. *The King*). However, when the prime contract is cost-plus in character, it may be required that the contractor sublet under competitive bidding conditions or that sub-contract prices be satisfactory to the Government.

211. ***Security Deposits and Holdbacks.***—Various statutes give directions; in addition, section 39 of the FA Act vests in the Governor in Council a power "notwithstanding any other Act" to make

regulations with respect to the security to be given to and in the name of Her Majesty to secure the due performance of contracts.

Departments must observe all such directions and administer the contract in such a way that the security undertaking does not become unenforceable. For example, a concession to a contractor may in certain sets of circumstances relieve the giver of security from the obligation to indemnify in the event of a default.

212. Should a contractor fail to perform a contract and it is cancelled, normally he is not entitled to return of security deposit given to ensure due performance. If it be decided to reimburse him, an Executive order should authorize a charge to a vote as an *ex gratia* payment, with the money forfeited being credited to Revenue.

213. Holdbacks are in the nature of special security exacted from the contractor, and section 40 of the FA Act now regulates accounting treatment:

> Where a payment under a contract is withheld to ensure the due performance of the contract, the payment may, subject to this Act, be charged to the appropriation for that contract, and the amount so charged may be credited to a special account in the Consolidated Revenue Fund, to be paid out in accordance with the contract under regulations of the Treasury Board.

The Board has directed that holdback settlements may be made when

(*a*) the contract has been satisfactorily performed; or

(*b*) the contract was terminated for reasons that are not attributable to any fault of the contractor,

and the Government has no claim against the contractor for the satisfaction of which the holdback may be required.

214. The Government assumes no responsibility for accounts of suppliers or for payment of wages to workmen. Mechanics liens, etc., registered under the authority of provincial statutes are ineffective when a Crown project is involved. However, the Wages Liability Act provides that:

> 2. If any contractor with Her Majesty, or any subcontractor in the construction of any public work let under contract by Her Majesty, makes default in the payment of the wages of any foreman, workman or labourer, employed on such work, or in the payment of any sum due by him for the labour of any such foreman, workman or labourer, or of any team employed on such work, and if a claim therefor is filed in the office of the Minister entering into such contract on behalf of Her Majesty, not later than two months after the same becomes due, and satisfactory proof thereof is furnished, Her Majesty may pay such claim to the extent of the amount of all moneys or securities in the hands of Her Majesty for securing the performance of the contract at the time of the filing of the said claim.

This legislation does not, of course, subordinate the claims of the Government to those referred to in the quotation above. It is really an 'appropriating' section to permit disbursements from Consolidated Revenue Fund after the Crown's claims are satisfied and the Government has notice of claimants to a balance payable to a contractor.

215. ***Performance Certificates.***—Contract payments are required to be supported by a certificate of the deputy head "or other officer" specifically authorized by the Minister (section 32 of the FA Act). It should be specific and without qualification. The purpose is that once stated in a Supreme Court decision:

> The only office of the certificate under the contract is that it is a voucher to the department charged with the disbursement of public moneys that the claim is due, and at the same time the existence of such a certificate is a condition precedent to enable the contractor to obtain any money at all. That is its only purpose. (*Goodwin* v. *The Queen.*)

Auditors will note the words "it is a voucher". Section 32 is addressed to the Comptroller of the Treasury, who is to refuse payment until he has a satisfactory certificate. Section 31(1) controls the selection of a vote to be charged, while the function of section 32 is to ensure that value was received before payment was made, so a requisition under 31 is conditional on requirements under 32 being met.

216. The routine purpose of section 32 is to require a certificate

> that the work has been performed or the material supplied or both, as the case may be, and that the price charged is according to contract, or if not specified by contract, is reasonable.

The last few words are sometimes of concern in the audit. What tests are to be applied to evaluate the reasonableness of a price? Commonwealth practice is that auditors general should draw to the notice of the House of Commons cases observed of waste and extravagance. But such situations are exceptions. In the audit of normal transactions of a department, it is not expected that an auditor concentrate on the question of whether a fair price was paid for everything acquired. An auditor is expected to keep that point in mind, but as Mitchell appropriately remarks:

> This practice, a reply to the cry that departments need only spend appropriately—that is, on approved services—without having to exact value for money, is still open to the criticism that the audit staff is not in as good position as the departments themselves to judge what is economical or uneconomical. ("State Finance", p. 82.)

Therefore, a limited obligation rests on auditors in applying this extra-statutory service. The direct obligation to obtain a fair price is on the department, and the statutory check is the duty on the Comptroller to refuse to act on the certificate

should he be of opinion that it is not factually correct. It may happen that information that is before an auditor causes him to decide that a price paid was unreasonable; but if it is only a matter of doubt on his part, he should ascertain what was the cost to other departments for the same kind of service.

217. Clause (*b*) of section 32 is new. In condensed form it is:

> No payment shall be made for the performance of work or the supply of goods . . . unless . . . the deputy of the appropriate Minister or other officer authorized by such Minister certifies
>
> (b) where a payment is to be made before completion of the work or delivery of the goods, that the payment is in accordance with the contract.

This relates to progress payments, but the text is such that a payment may be certified before any work is performed, provided it was a condition of the contract. In other words, a contract agreement must exist and it specifically provide that a payment matures before work is performed or goods delivered.

218. ***Cost-Plus Contracts.***—This type of contract has many critics, but no alternative has yet been developed where, for example, a project is experimental or it is impracticable to develop all plans and specifications before work commences. When a cost-plus contract award is contemplated, the selection of the contractor is an exercise of ministerial judgment, but subject to Executive order. Although the Government reimbursed wages actually paid and other like costs, the employees of a contractor are in no sense public employees because the Government neither engages nor manages them, nor enjoys a power to dismiss.

219. ***Cost Audits.***—Because of the nature of a cost-plus contract, a cost audit is obligatory on the department, so a step in the parliamentary audit is to scrutinize the scope of the cost auditor's programme. Should a 'spot' survey be made, the plan should be to associate it with the work being performed by the cost auditor. This saves time and avoids both unnecessary expense and disturbing relationships between the cost auditor and the contractor. However, if it be found that inadequate records are being maintained by the contractor, the Audit Office will directly intervene by drawing the matter to the attention of the appropriate administrative authority.

220. Various other types of contracts include provision for cost audits. Such audits have now statutory status, section 31 (7) of the FA Act reading:

> Where, in respect of any contract under which a cost audit is required to be made, the Comptroller reports that any costs or charges claimed by the contractor should not in the opinion of the Comptroller be allowed, such costs or charges shall not be allowed to the contractor unless the Treasury Board otherwise directs.

The effect of the foregoing is that a department may neither ignore nor compromise findings of the Comptroller, and if a claim was recognized but later disallowed, a duty exists to recover, otherwise there is an irregular payment to be reported.

221. It is not imperative that cost audits be made only by officers of the Comptroller, but the fact that such an audit is made by persons not under his control does not remove the cost audit findings from the ambit of subsection 7. In the event of a Treasury Board overruling, an auditor bears in mind that it is not an adjudication enjoying the same status as the exercise of a statutory discretion; it simply relieves the Comptroller of statutory responsibility for the payment.

Payments to Crown Servants.

222. *Power to Appoint.*—Generally engagements must be founded on an enactment permitting employment with a rate of pay. There are exceptions, the ranking one being the office of Prime Minister. Others include ambassadors and members of the Service Forces where, subject to money being provided, appointments are an exercise of the prerogative. In the event that a statute does not specify who has the power to appoint, section 131 of the B.N.A. Act applies:

> Until the Parliament of Canada otherwise provides, the Governor General in Council may from time to time appoint such officers as the Governor General in Council deems necessary or proper for the effectual execution of this Act.

The words "other than powers of appointment" in section 5 (2) of the FA Act indicate that the intent is that Treasury Board is not to make statutory appointments.

223. The Civil Service Act vests the making of most appointments in the Civil Service Commission. However, in special cases the Commission may, by use of section 60 of the Act,

transfer powers to others. The Commission being a statutory body, its appointments are evidenced by certificates. Such an appointment may be irregular because of failure to hold a competition, etc., but ordinarily it is not an audit obligation to go behind the certificate—the audit is of expenditures.

224. *Effective Date.*—Unless the taking of an oath is a condition precedent to the taking of office, a person who is duly appointed may be paid salary before the oath is administered. In the absence of a specific direction as to the starting date for pay purposes, the date of the appointing order or certificate is of importance because, by section 11 of the Interpretation Act,

> the same shall be construed as coming into operation immediately on the expiration of the previous day.

There are, of course, exceptions, a common one being when a temporary is given permanent appointment with retroactive effect and the rate is lower than that paid previously. No refund need be made because (*a*) the original payments were lawfully made, and (*b*) it is generally accepted that:

> A retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment.

225. Appointment to or reclassification of a position does not automatically establish a right to payment:

> The basis for salary is an appropriation, and if there is no appropriation or authorization to pay the salary, the fact that the position is established by law and that a person has been appointed to fill the position does not entitle him to a salary payment. (Field, "Civil Service Law", p. 105.)

226. Should a person agree to take an appointment at less than the rate fixed, a question of principle is presented because, as was pointed out in the United States:

> It is to be assumed that Congress fixes the salary with due regard to the work to be performed, and the grade of man that such salary may secure. It would lead to the grossest abuses if a candidate and the executive officer who selects him may combine together so as entirely to exclude from consideration the whole class of men who are willing to take the office on the salary Congress has fixed, but will not come for less. (*Miller* v. *U.S.*)

227. *Fixing Rate of Salary.*—If a rate is fixed by statute, it automatically becomes applicable, but if no rate is thus specified, the individual is dependent on the bounty of the Executive. To illustrate, *Tucker v. The Queen* was an action by a lawyer seeking compensation for services rendered as a commissioner appointed under Part II of the Inquiries Act. He failed because the statute making no provision for compensation,

> it is clear that the service was not rendered in virtue of any contract, but by virtue of an appointment under the statute, and no provision being thereby or otherwise made for the payment of the Commisisoner for his services as such Commissioner, no promise on the part of the Crown to pay therefor is to be implied from the appointment and from the rendering of such service.

The same rule was applied in *Lefebvre v. The King,* where Lefebvre sought $1,500. He proposed that he be authorized to inquire into the French postal practice of collecting subscriptions for periodicals and the Postmaster General agreed:

> Vous êtes, par les présentes, autorisé à agir comme officier spécial au sujet de cette enquête.

The Court took the view that as the nature of the employment was obviously special, it could not be treated as comparable to ordinary administrative appointments, and no provision having been made for compensation, none could be claimed as a right.

228. *Appointment by Naming in a Vote.*—When a person is named in an Appropriation Act for appointment at a certain salary rate or grade, this may be regarded as vesting in the Governor in Council the power to appoint, notwithstanding any existing statute. An order in council is necessary to validate the appointment. When Estimates Details provide a special salary rate but no power to put into effect is made part of the vote itself, the effect is solely that of the Executive giving notice that, if the sum is granted, it will probably endeavour to put the new rate into effect. In the first instance, a power is granted, while in the second only an indication of intent is involved. In neither case does the individual named acquire an enforceable right.

229. *Services by Contract.*—Parliament contemplates that public administration be by servants of the Crown and that these persons have no outside interests which will interfere with the performance of official duties. An auditor should investigate

any arrangement whereby ordinary public services are performed, under contract, by employees of corporations, etc. There are obvious exceptions from the foregoing, an illustration being that of retaining a lawyer to act for the department. His account is subject to taxing by the Department of Justice—that is part of the engagement—but payments to him are not by way of salary, and are calculated in accordance with the customs of the profession:

> When an advocate . . . is, by law and the custom of his profession, entitled to claim and recover payment for his professional work, those who engage his services must, in the absence of any stipulation to the contrary, express or implied, be held to have employed him upon the usual terms according to which such services are rendered. (*R.* v. *Doutre.*)

Conversely, an Irish solicitor, who was accustomed to receive all the legal work of a municipal council, sought to be recognized as an "officer" for pension purposes, but failed, it being held that

> the element of the continuity of duty as distinguished from casual employment could not be established. (*The Queen* v. *Armagh Urban Council.*)

230. Civil Service Regulations do not extend to classes and positions which are not made subject to the Act. Section 7 (c) of the FA Act vests in Treasury Board a power to make regulations, "subject to any other Act", for

> prescribing rates of compensation, hours of work and other conditions of employment of persons in the public service.

231. Generality in application is an essential characteristic of a regulation, consequently a Civil Service Commission or Treasury Board direction issued to meet the needs of a special case should not be regarded as regulating other cases.

232. ***Titles of Office.***—Many statutes describe departmental establishments as consisting of 'officers, clerks and employees'. All being servants of the Crown, an auditor may ask: What is the distinction? Strictly regarded, an 'officer' is the holder of a statutory office and is answerable for the due performance of the functions of his office, whether he does, or does not, personally perform them. Consequently:

> The incumbent of an office is *prima facie* entitled to the lawful compensation thereof so long as he holds the office, though he may be disabled by disease or bodily injury from performing its duties.

. . . If the appointing power suffers him to continue in office, notwithstanding the disability, he is entitled to the compensation. This right may be cut off by law or regulation authorizing it, but not by the act of the appointing power without the authority of law or regulation. (*Sleigh Case.*)

On the other hand, if the position is an Establishment one, regulations regarding leave, etc., apply. Should he have particular responsibilities, 'officer' is more appropriate than 'clerk' —a court once remarked, when seeking the appropriate category for a man working in an office for a salary of £175, that:

he is in the situation as a clerk at a modest salary . . . he is in no sense a public character, nor does he hold any office at all.

The distinction generally drawn between a 'clerk' and an 'employee' is to regard a person engaged for the performance of manual work as an 'employee'.

233. *'Salary' or 'Wages'.*—The Civil Service Act uses the word 'compensation', but an auditor may also wonder what is the distinction, if any, between 'salary' and 'wages'. Generally, a basis of payment other than an annual rate is presumed to result in wages. Probably as good a definition as any is that given in an Australian case:

Where an engagement is for a period, is permanent or substantially permanent in character, and is for other than manual or relatively unskilled labour, the remuneration is generally called a salary.

234. *'Allowances' and 'Salary'.*—The distinction here is of importance because of section 16(1) of the Civil Service Act:

In the absence of special authority of Parliament, no payment additional to the salary authorized by law shall be made to any deputy head, officer, clerk or employee permanently employed in the civil service in respect of any service rendered by him, whether in the discharge of his ordinary duties of office or of any other duties that may be imposed upon him, or that he may undertake or volunteer to discharge or otherwise perform.

Also, because the Public Service Superannuation Act defines salary as

the compensation received for the performance of the regular duties of a position or office.

Great care has to be exercised because various statutes necessitate different treatment. To illustrate, overtime pay is 'income' for the purposes of the Income Tax Act, but it is

generally treated as an 'allowance' for purposes of a superannuation scheme. A general distinction, for the purposes of section 16 of the Civil Service Act, is to regard a payment as an allowance when obviously for the purpose of compensating for particular or special requirements associated with services rendered (representation allowance, for example) or received on account of unusual conditions of service (a payment to offset extra costs due to remote location, for example).

235. ***Tenure of Office.***—Unless it is otherwise provided, a civil servant holds office during the pleasure of the Crown. The courts have invariably ruled that, in the absence of special circumstances, it is an implied condition of the engagement that the Crown may dismiss at pleasure.

236. ***Resignations.***—Section 53 of the Civil Service Act authorizes regulations to be made to

prescribe what shall constitute a resignation of a position.

To qualify for a retiring grant, the regulations call for (*a*) two weeks' notice given in writing to the deputy head with application for retiring leave, (*b*) on acceptance by the deputy head, transmission to the Commission with a recommendation as to leave he is disposed to grant, and (*c*) a leave award by the Commission. Thereupon,

the resignation shall be held to become effective at the expiration of the period of retiring leave approved.

An Executive order is obligatory for a dismissal (for Civil Service Act classes) but not to accept a resignation. In the event of absence without leave, it is provided by the regulations that:

> Any employee absent from duty without leave for a period of two weeks shall be held to have abandoned his position which shall thereby become vacant, and if the department desires, immediate steps may be taken to fill the same.

It need not be regarded that, at the end of two weeks, the employee is automatically out of the civil service—the deputy head may exercise a discretion.

237. ***Superannuation Contributions.***—The statute states that contributions to the Superannuation Account be made by "reservation from salary or otherwise". The words "or otherwise" are new, but ordinarily:

There is no obligation on the man to pay, but there is an obligation on him to permit the deduction from his annual wages of the amount required for the superannuation fund. (*Tees Conservancy Commissioners* v. *James.*)

In other words, failure to deduct is an omission for which the paying office is answerable to the Crown—subject to surrounding circumstances, it need not adversely affect the rights of the individual concerned.

238. Any general failure to deduct is a Report subject because neither the Crown nor the individual may contract out of a statutory pension scheme. Such an attempt was made by the Salford Guardians, who were subject to a scheme akin to the Canadian Act. They decided to pay a cost of living bonus and notified the staff that (a) no deductions for superannuation would be made, and (b) the bonus would not be taken into calculation for superannuation awards. The House of Lords decided the Guardians had no such power, it being pointed out that otherwise it would be

in the option of the boards of guardians to determine whether or not this statute shall apply, and they can (as one of the learned Lord Justices said) make the statute a dead letter. I cannot think that that was the intention of Parliament. It rather appears to me that by using the imperative terms . . . Parliament has indicated an intention that the Act shall apply notwithstanding any agreement to the contrary. (*Salford Guardians* v. *Dewhurst.*)

239. Once deduction for superannuation is made, the contributor has no claim to the money unless he can demonstrate that the deduction was illegally made. Millin J. in *Wiehman* v. *Commissioner of Pensions* remarked:

The contributions to the pensions fund are obligatory; a member is not entitled to elect whether he will pay or not. He must pay, and as soon as he has paid the money ceases to belong to him. It becomes part of the fund which is controlled as prescribed by the Act, and the person paying in the contribution has no share in that control—the identity of the individual contributions is lost; they are merged into the fund. It cannot in any sense be said that the money paid into the fund remains the money of the person paying it in. His only interest in that fund is that he may be entitled to get out of it such moneys as may be prescribed by the Act in particular circumstances.

240. A promise to treat a person as a contributor or to award a pension on a certain basis is without legal effect. For example, certain British civil servants claimed that they had been induced

to enter the civil service by a Treasury promise that, when pensioned, it would be on a certain basis. This was not done, so they litigated but failed:

> If you find that the statutes give the Lords of the Treasury a discretion, that is their power and their only power. They might by contract possibly involve themselves in personal liability, but they never could involve the Crown because they are not authorized to make any such contract. (*Nixon Case.*)

In other words, if an exception is to be made, legislation is necessary.

Service Forces

241. In England, an annual Act fixes the number of soldiers that may be enrolled. This stems from a clause in the Bill of Rights against raising or keeping a standing army in time of peace without the consent of Parliament. No annual legislation is necessary in Canada because section 16 of the National Defence Act declares that the numbers of officers and men in the regular forces and in the reserve forces "shall be as from time to time authorized by the Governor in Council". The same Act vests in the Minister of National Defence the power to divide the naval, army and air forces into such "units and other elements" as he may see fit, but the maximum number of persons in each rank and trade group is, by section 23, to be prescribed by regulations of the Governor in Council. Section 36 directs that pay and allowances

> shall be at such rates and issued under such conditions as are prescribed in regulations made by the Governor in Council.

242. In the event of an overpayment, it is regarded that a more extensive discretion to omit recovery action is enjoyed than in the case when a civilian is overpaid. The reason is the special relationship between the Sovereign and service force members. This has the effect of modifying the relationship between the Executive and Parliament in so far as the routine of internal management of the Forces is concerned. Neither a Minister nor a service officer, regardless of rank, may direct write-off of an overpayment, but should the Governor in Council see fit to direct that recovery action be not pressed in a particular case, or class of cases, audit notice may be taken of the decision.

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Travel Expenses

243. Every public employee has an official station and ordinarily he cannot be in travel status within the accepted boundaries of the place. Moreover, the expense must be for an official purpose. While the illustration now given relates to a lawyer and his income tax liability, it draws a line of division:

> In order to decide into which category to put the cost of travelling, you must look to see what is the base from which the trade, profession, or occupation is carried on. In the case of a tradesman, the base of his trading operation is his shop. In the case of a barrister, it is his chambers. Once he gets to his chambers, the cost of travelling to the various courts is incurred wholly and exclusively for the purposes of his profession. But it is different with the cost of travelling from his home to his chambers and back. That is incurred because he lives at a distance from his base. It is incurred for the purposes of his living there and not for the purposes of his profession . . . and this is so whether he has a choice in the matter or not. It is a living expense as distinct from a business expense. (*Newsom* v. *Robertson.*)

244. When a civil servant is transferred temporarily from one place to another—for example, to act as substitute for an officer who is absent—the risk is present that, if the stay be prolonged, living allowances paid become, in fact, additional salary, something contrary to section 16 of the Civil Service Act. It is for this reason that reimbursement of expenses over an extended period merits special audit consideration.

245. ***Per Diem Allowances.***—When a per diem is fixed by a statute, and no direction is given with respect to fractions of a day, it is discretionary with the department administering the vote to be charged whether notice be taken of fractions of a day, because the law normally does not take notice of a fraction.

246. When a per diem rate has been fixed, it has been ruled that those concerned have no option but to make an accounting based on the per diem, regardless of costs actually incurred. Conversely, as it is a scheme of averaging costs, the officer may claim the full amount over the period, although on a particular day or days his actual outgo may have been less than the maximum permissive.

247. ***Reimbursing Expenses of Private Persons.***—The Minister over a department may authorize reimbursement of expenses of persons who are not public employees. However, it has to

be established that the expenditures were incurred on public business and as the consequence of an official demand. Of course, this may not be extended over a continuous and extended period as payments then have characteristics of a salary payment and, as such, attract audit notice from the viewpoint of authority to employ.

248. ***Expenses of a Civil Servant on Leave.***—Section 46(1) of the Civil Service Act provides that a deputy head "may grant" leave of absence for the purposes of vacation. This may not be regarded as an unqualified 'right' enjoyed by public employees because subsection 2 reads:

> Every officer, clerk or employee shall take the leave granted under subsection 1 at such time during each year as the deputy head determines.

A person going on vacation leave is not eligible to have his travel expenses paid, but the question sometimes arises: Is he, when called back to duty? In some countries the rule is strict, for example:

> An officer takes his leave of absence at his own risk; it is not granted for the benefit of the Government; if the Government wants his services before his leave expires it must have them, and the officer who takes the risk of that must bear the loss of his personal travelling expenses. (*Fitzpatrick* v. *U.S.*)

No invariable rule has been adopted in the Canadian public service, but audit notice is taken when a reimbursement of travel expenses bears close relationship to the expiry of the leave period. Moreover, it is to be expected that the deputy head approved the reimbursement.

249. ***Travel Advances.***—The Travel Regulations permit advances being made to finance official outlays of a person about to travel on official business. An auditor should consider whether the advance appears to have been unnecessarily large or was not promptly accounted for on return, because such a transaction can have some of the characteristics of a personal loan out of public money. Similarly, an auditor should note where one department makes a travel advance to a person on the establishment of another because, unless the person is officially seconded for duty, the department on whose establishment the officer is should finance the outlay until reimbursed by the other. When a trip relates to more than one service and these have separate votes, it is regarded as permissive

to charge the cost either to (*a*) the vote for general administration of the department, or (*b*) the vote for the service which, in the opinion of the deputy head, primarily necessitated the trip.

250. Section 36 of the FA Act stipulates that all outstanding advances "be repaid or accounted for" at the year-end, and failure so to do vests in the Comptroller of the Treasury a power to recover out of any moneys payable to the person to whom the advance was made. A year-end accounting need not be accompanied by a surrender of money held if the holder still be in actual travel status on April 1st—it may be converted into a new year advance.

Accounts

251. ***Commitment Control.***—A statutory duty of the Comptroller of the Treasury is to maintain records of contractual and other commitments which will ultimately result in expenditures of money. The purpose is to provide the Cabinet with a safeguard against departments entering into undertakings without having funds available to meet the cost. The audit obligation with respect to this phase of financial control is essentially to observe whether the accounts have been faithfully and properly kept.

252. Sometimes a vote provides that a department may record commitments in excess of the sum granted. This neither adds to the spending power nor extends the life of appropriations, but takes notice of the probability that, where a heavy spending programme is in effect, a significant percentage of commitments will not come for payment during the current year. The plan raises the ceiling for bookkeeping recordings of commitments, but avoids appropriating more than is expected will be disbursed. Parliament having stipulated a special maximum, a step in the audit is to observe whether commitments recorded were within the amount named. A like obligation exists when the special exception takes notice of a span-of-years policy and allows registration of commitments when deliveries will take place in subsequent years.

253. ***Capital Costs.***—Parliament at one time distinguished between 'Ordinary' and 'Capital' expenditures, so a Public Accounts Committee in the 1880's defined a capital work as one of national, rather than local, significance. Thus railways

and canals, buildings at Ottawa, etc., were treated as capital, while local post offices, etc., were recorded as ordinary expenditures. The distinction is no longer drawn, but texts of various votes sometimes make doubtful the accounting propriety of charges.

254. Where a department has a vote for 'construction', it obviously is chargeable with the cost of works which come within the accepted accounting concept of capital outlays. What is the audit obligation where there is no 'construction' vote and charges of capital nature are made to operating and maintenance votes? A presumption of the law is that Parliament selects every word with care, but an Appropriation Act is a special kind of statute, with Estimates Details giving the indications as to the purposes to which votes will be applied. Should the Details forecast charges of a capital nature, no audit observation to the House is necessary unless expenditures far exceeded those forecast or were otherwise a material deviation from the 'Details' forecast. Sometimes no indication whatever is given in the 'Details' of a proposed capital outlay but in the year such an expenditure is incurred as a charge to an operating and maintenance vote. An auditor should investigate why the cost was incurred. If he forms the opinion that the cost might have been one financed by use of section 28 of the FA Act (Governor General special warrants), no reference to the transaction need be made in the report to the House of Commons.

255. ***Paid Cheques.***—The text of section 34 of the FA Act is such that the Audit Office no longer is required to participate in the custody of paid cheques, nor in settlements with cashing banks. It is, of course, still a duty to observe practices and procedures. The right still exists to call for any redeemed cheque or group of cheques, if required in the audit.

THE AUDIT OF STORES

256. There was no general legislation on the subject of stores management until the FA Act took effect. Part V treats with departmental stores—a word subject to definition by Treasury Board, as section 62 empowers the Board to

> define for any department the expressions 'stores', 'materials' and 'issues'.

Part V is supplementary to any other enactments with respect to stores, the more important special directions now existing being in the Defence Production Act and the National Defence Act. With respect to the latter, the word 'materiel' is used and is defined for the purposes of that Act to mean

> all movable public property, other than money, provided for the Canadian Forces or the Defence Research Board or for any other purpose under this Act, and includes any vessel, vehicle, aircraft, animal, missile, arms, ammunition, clothing, stores, provisions or equipment so provided.

257. The aim of Part V being to establish systems of stores control that are suitable for the special needs of departments, what follows is subject to such modifications as the nature of departmental activities, the directions of Treasury Board under section 62 and any other enactment which may be applicable.

258. ***The Audit Obligation.***—The responsibility for stores accounts is departmental, but section 61 of the FA Act provides that:

> The Comptroller [of the Treasury] may examine records, accounts and procedures respecting stores and materials and report thereon to the Minister [of Finance] or the appropriate Minister.

This does not relieve the Auditor General of the obligation under section 67 to make such examinations as he may deem necessary of the accounts relating to "public property" in order to ascertain whether in his opinion

> essential records are maintained and the rules and procedures applied are sufficient to safeguard and control public property.

The words "public property" are not defined by the Act, but include all types of material, supplies and equipment and, where appropriate, livestock.

259. ***The Word 'Department'.***—Section 57 directs that "every department" shall maintain adequate records of stores. This extends to all divisions of government known as 'departments' and also to such special divisions of the public service as may be so designated by order in council for the purposes of the FA Act. Section 2 of the Act also contemplates that the Part be applicable to stores of the Houses of Parliament, the Parliamentary Library and of departmental corporations listed in Schedule B.

260. ***The Meaning of the Word 'Stores'.***—Until Treasury Board defines 'stores' for the purposes of a department, it will be presumed that it includes all classes of stores, movable equipment, etc., which normally are controlled by means of stores and equipment accounts. A broad view has to be taken in the audit because, as a British Public Accounts Committee once observed:

> Irregularity in the disposal of public stores is equivalent to an illegal appropriation of public money, and an audit of the expenditure of money granted by Parliament for the purchase of stores does not satisfy Parliament as to the final application of such money—that is, as to the proper disposal of stores.

Therefore, the Audit Office has a duty to call attention to any matter which may trench on the field of Parliament.

261. ***Departmental Rules.***—Section 57 of the FA Act requires the Minister over each department to make rules regulating the acquisition, receipt, custody, issue and control of stores. An auditor examines to ascertain whether these rules adequately control purchases, custody, receipt and issue, sale or condemnation. Interest is primarily in the system. Tests of inventories are made, but when unsatisfactory conditions are noted the obligation is normally on the department to make the complete examination. In other words, the statutory obligation is to report when an examination discloses (*a*) major deficiencies, (*b*) laxity or inefficiency in stores administration, or (*c*) unsatisfactory supervisory control.

262. Recording of receipt and issue of stores is but a step in stores management. Records maintained should be of a nature as to result in efficient utilization. For example, in the case of equipment, an auditor is interested in whether: (*a*) records are maintained to give a description of the equipment, its location, and identifying mark wherever it is practical to mark; (*b*)

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transfers within the department have proper authorization; and (c) there is adequate procedure in effect to bring on charge equipment that is manufactured in workshops of the department. Generally, audits of accounts should review systems of procurement, recording, identification, inspection and stocktaking, disposal and, where relevant, valuation practices.

263. Complete relationship between appropriations and utilization of stores acquired as a charge thereto is to be expected, otherwise there is a risk of carelessness in administration and indirect supplementing of a vote. For example, failure to bring on ledger charge materials acquired or issued for a works project, and which remain on hand upon completion of the project, may result in either a loss of stores or the surplus being applied to other projects without a control being exercised. The latter would be the equivalent of supplementing a vote by irregular departmental action.

264. ***Stocktaking.***—The responsibility for stocktakings is departmental:

> From first to last, the department that provides, keeps, and supplies or uses the stores ought to answer for them, and for what is done with them, so long as they remain in its hand, and for this purpose must keep accounts, and take stock of them. (British Public Accounts Committee)

In the audit, whatever tests appear necessary are to be made, but the duty is on the department to perform the periodic stocktakings.

265. ***Recording by Value or Quantity.***—A question sometimes is whether the FA Act contemplates that inventories be recorded by values or quantities. Obviously when the stores are taken into the Government's Statement of Assets and Liabilities, the use of values is obligatory; but in other circumstances the question is simply what method is better adapted to maintaining control. For example, in 1908 the Accounting Officer for the Army told the British Public Accounts Committee that, so far as his accounts were concerned, a valuation statement was a "work of supererogation, and not worth the labour or expense which is devoted to it," and the Committee agreed to a report by quantities being substituted.

266. ***Responsibility for Public Stores.***—The Minister over a department is answerable to Parliament for all stores held; but a distinction is to be drawn between political answerability

and custody. Each item of public stores is always the responsibility of a particular individual. Being Crown property, a department is never an owner, so stores may never be regarded as held in common by the department as a whole. If no officer is specifically charged with custody, the deputy head is responsible. Stores in the custody of, or at the command of any officer are held by him in trust and he must be ever ready to make an accounting. To illustrate, in 1923 the British Public Accounts Committee considered the question of responsibility after a theft of silver medals from a safe that was not burglar-proof. It was decided:

> The provision of strong rooms and safes is a responsibility of the Office of Works; but it rests with the head of a department to satisfy himself that the accommodation, when provided, is adequate for the purposes of his department, and, unless he makes a formal written protest, he cannot plead defective accommodation in extenuation of any loss that may subsequently occur.

267. A theft of stores by a servant of the Crown is, from the administrative viewpoint, a more serious matter than when the act is that of an outsider. No adjustment in accounts arising out of a fraud of a public employee should be made without Executive sanction. Section 98 of the FA Act requires losses due to fraudulent acts to be reported in the Public Accounts, therefore any adjustment of stores accounts by reason of fraud, no matter how trifling, should be made only on the authority of a Treasury Board minute.

268. ***Rejection of Deliveries, and Stores Held for Others.***—When goods are rejected on delivery, a British rule is that

> notice should be given to a contractor as soon as his goods have been rejected, and that he should be required to remove them within a certain time, at the expiration of which all responsibility for them on the part of the Department would cease.

If a department takes no immediate action to remove rejected goods, they should be provisionally taken on charge, because so long as property belonging to others is in the control of a public authority a liability to the owner may exist; the degree may vary but it may not be brushed aside. To illustrate the general position, reference is made to a recent English decision. During World War II the British War Office requisitioned a house but agreed that the owner could use one room as a store room. No listing of the stored articles was given, but the room was locked and sealed in the presence of representatives

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of the War Office. Later, articles were stolen and the War Office held liable on the ground that the standard of public care was the reasonable care which a man would take of his own property, and Government officers had not shown that degree of care. (*Blount* v. *The War Office.*)

269. ***Inter-departmental Transfers.***—In the absence of a statutory prohibition, a department may be regarded as competent to transfer stores for the use of another department. (A like discretion does not exist with respect to 'surplus Crown assets', as defined by the Surplus Crown Assets Act.) What are now referred to are items periodically required by a department but currently held in quantities in excess of immediate need. An auditor need not regard the word "transfer" in section 97 of the FA Act as applicable to a loan on basis of ultimate replacement, because no real conveyance of property takes place—since ownership remains in the Crown, it is only the management which passes from one Minister to another. A consequence, of course, is that the resources of the recipient department are increased; therefore, it is to be expected, where quantity or value is substantial, that a Treasury Board minute approve the transfer. When a branch of the public service is transferred from one department to another, application of the Public Service Re-arrangement and Transfer of Duties Act regulates transfer of related stores, unless some other Act gives directions.

270. ***Sales of Stores.***—Ordinarily, resale is not contemplated when a department acquires stores; however, sales sometimes result. In the absence of a prohibitory provision in a statute, the essential is that great care be taken to secure a fair price:

> No department is at liberty to dispose of commodities which it holds for the public at a price which is not the best that can be obtained from the general public without, at any rate, the previous authority of the Treasury.

This was the view taken by the British Public Accounts Committee in 1924. Applying it to a sale by a Canadian department, 'Treasury' would read 'Treasury Board'. Original cost is not necessarily the standard—it may be more or less, depending on current demand, location, etc. An exception from the foregoing is Defence Service stores, where 'catalogue' rates are treated as applicable.

271. Where stores represent production—for example, products of an experimental farm—sales at going prices are matters within departmental discretion, but safeguards are to be expected when sales are to members of a department, because of the risk, or suspicion, of partiality.

272. ***Gifts of Stores.***—The Crown does not enjoy a right to give stores away without the consent of Parliament. This stems from decisions taken in the reign of Queen Anne, when the sovereign surrendered the royal income in exchange for a 'civil list' appropriation. The purpose was to safeguard against the diminution of the public income by the sovereign giving away property from which the income was derived. Over the years it has become accepted that public property may not be employed gratuitously in the service of private individuals merely to save them from expense; that is to say, charges should be exacted whenever public property is used for a non-governmental purpose unless the Governor in Council makes an exception under section 97 of the FA Act, which reads:

> Subject to any other Act of Parliament, no transfer, lease or loan of property owned by Her Majesty in right of Canada shall be made to any person, except in accordance with regulations or on the direction of the Governor in Council.

Auditors will note that the power is vested in the Governor in Council, consequently a department does not enjoy any discretion unless given by some other statute.

273. An audit problem sometimes presents itself when stores are distributed to promote an administrative policy. An illustration might be a distribution of food or medical supplies by a department having a special interest in promoting the welfare of a class. If a distribution, in effect, supplements an appropriation which might be applied to the same objective, the action is comparable to that of charging a general vote with an expenditure in order to supplement indirectly a specific grant. On the other hand, if a vote could not be applied to the purpose and stores are available, audit interest is in establishing that the Governor in Council consented to the action taken.

274. ***Write-offs.***—Stores accounts should reflect truly at all times the holdings, therefore the records should clearly portray what was the nature of the authority relied upon to make whatever adjustments were made, by reason of losses or deficiencies,

errors, condemnations, etc. A stores accountant is not responsible for the decisions. The duty on him is to make certain that his accounts properly record the action directed to be taken.

275. Subsection 1 of section 60 of the FA Act requires that at least once in every five years each Minister constitute a board of survey to enquire into the state of the stores under the management of the department. The size of the board is in the discretion of the Minister, and there may be more than one board. Subject to the terms of appointment and departmental rules, members of a board of survey may continue to function from year to year. It is not necessary that the board consist wholly of departmental officers, but no member should have direct association with the administration of stores under review by the board. Audit notice should be taken of the procedure adopted for convening the board, because the public interest may not be adequately protected if an interested person is in position to decide when the board is to meet. Section 60 (2) states the administrative process to be followed when a board of survey reports. The subsection reads:

> Where a board of survey constituted under subsection one recommends the deletion from inventory of any obsolete or unserviceable stores or materials or any stores or materials lost or destroyed, the appropriate Minister, with the approval of the Treasury Board, may direct the deletion of all or any part of such stores or materials from the inventory, but the value of stores or materials so deleted shall not be credited to a revolving fund except with the authority of Parliament.

276. A write-off by reason of obsolescence, natural wastage or condemnation requires acceptance by the Minister (which includes deputy head) of the board's recommendation. In turn, a decision of the Minister to accept the report requires concurrence by Treasury Board before a correction may be made in the accounts. Collectively the aim is to protect against a purported write-off being, in fact, a means to cover up an indefensible deficiency without appropriate remedial action being simultaneously taken.

277. A board of survey is to enquire into "the state of the stores" under the management of a department. In performing that task it necessarily is concerned with the state of the stores records, but no department should await a survey by the board when it is aware, or has reason to suspect, that 'losses'

or 'deficiencies' disclosed at a departmental stocktaking are due to bookkeeping, etc., errors. Appropriate action should be taken forthwith, but it is to be expected that the department's board of survey is informed of the state of affairs whenever errors were numerous or substantial quantities were involved.

278. ***Revolving Funds.***—The Department of Transport Stores Act was repealed by section 101 of the FA Act, but the Transport Stores Account is preserved. Section 58 of the FA Act now permits a revolving fund scheme to be operated by any department upon Parliament fixing the sum to be available for the fund. All accounting transactions are to be recorded at cost (section 59)—this includes shipping charges. The existing inventories at the time the plan is made effective are to be valued by applying

> such recognized accounting practices as the appropriate Minister, with the approval of the Treasury Board, may direct.

279. The fact that a department has a revolving fund at its command does not necessitate that all procurements pass through the account. When stores are acquired for immediate needs of a particular project or service, the charge is often made directly to a vote. The purposes of a revolving fund are primarily (*a*) to provide for orderly purchasing and control, including bulk purchases, of stores needed by more than one division of a department, and (*b*) to facilitate financing during the period when departments are operating by means of interim supply Acts. However, notice should be taken when it is observed that year-end procurements appear to be in excess of the normal current needs of a department.

280. The application given to a revolving fund should not be such as to relieve the department of its dependency on Parliament for grants to absorb charges for supplies used. For example, notice is to be taken when a charge is left at the year-end in a revolving fund account for deliveries made to a service. It is also an irregularity when a revolving fund is temporarily used to finance costs actually incurred—the financial resources of a stores revolving fund should not be employed beyond issue for use.

281. ***Surplus Crown Assets Act.***—This legislation has as its aim the salvaging of the residual value of public property no longer required by a department. The selection of stores to be declared

surplus is within the discretion of Ministers over departments, but once that is done decisions as to disposition are those of the Minister of Defence Production, although by section 4 the department continues to be responsible for custody until it surrenders the custody or control thereof pursuant to the order of the Minister or the Crown Assets Disposal Corporation. In this regard, the statute is 'housekeeping' in purpose, with the powers vested in the Minister of Defence Production taking the place of those previously enjoyed by departmental heads.

282. The Act provides that the Minister may, with specific or general authority from the Governor in Council, through the medium of Crown Assets Disposal Corporation,

> sell, exchange, lease, lend or otherwise dispose of or deal with surplus Crown assets either gratuitously or for a consideration and upon such terms and subject to such conditions as he may consider desirable.

Therefore, once the Corporation takes custody, Part V of the FA Act no longer applies and the audit is of the application given to the Surplus Crown Assets Act.

THE AUDIT OF ASSETS AND LIABILITIES

283. Section 64 of the FA Act requires that the Minister of Finance include in the Public Accounts

a statement, certified by the Auditor General, of such of the assets and liabilities of Canada as in the opinion of the Minister are required to show the financial position of Canada as at the termination of the fiscal year.

284. The statement is to inform, in particular, Members of Parliament with respect to the fiscal position of the Government of Canada. Significant words in the quotation above are "of such" and "in the opinion of the Minister". It is the current financial position that is to be provided. The Minister is not expected, for example, to place a value on the millions of acres of Crown lands in the Northwest Territories. Conversely, he may not omit the Public Debt or other liabilities which in due course will necessitate drafts on Consolidated Revenue Fund. Likewise, the assets should include, besides cash and other liquid items, productive assets even if it be improbable that they will ever be realized upon.

285. It will be observed that the Auditor General is required to certify. He may not dictate that certain items be included or excluded, but there is an obligation to call the attention of the House of Commons to any asset or liability which he regards as incorrectly treated in the compilation of the Statement.

286. Section 63 of the FA Act provides that, subject to Treasury Board regulations, the Minister of Finance

may establish such reserves with respect to the assets and liabilities as in his opinion are required to give a "true and fair view of the financial position of Canada". It may not be regarded that section 63 permits anything more than the setting up of a reserve; for a write-off, a parliamentary authorization is to be expected.

287. The accounts of Canada are maintained on a cash basis, although there are exceptions—the liability for interest on the Public Debt is recorded as it accrues and other important liabilities are adjusted annually. Since 1920 it has been the practice to record as assets in the Statement only those loans, advances

or investments which are either interest producing, etc., or readily realizable. The explanation of this practice was given in 1920 by the then Minister of Finance to the House of Commons:

> Assets which are not readily convertible, as the specie reserve is, or are not interest producing, are not such assets as ought to be deducted from the gross debt. They are inactive, they are items of such a character as might well be placed in a suspense account. At any rate, whatever may be their future value, however great it may be, they are not assets of such a character as to directly reduce the gross debt any more than the other capital accounts of the country ought to be deducted from it. (Budget Speech)

288. Omission of asset items does not affect their status in law. What is published in the Statement is a listing of the obligations of the Government with offsetting assets conservatively valued, to the end that a realistic Net Debt figure is struck at the close of each fiscal year. The term 'Net Debt', naturally, has a special meaning when applied to a Government. In the case of Canada, it is the excess of funded debt and other liabilities over assets—other than fixed assets and non-active loans and investments—after providing for reserves against losses. The Net Debt is accounted for by the total of accumulated annual deficits (less surpluses) in which are absorbed charges for capital expenditures and non-active loans and investments. Comparisons by the public not infrequently are limited to the Net Debt figure, consequently any material change in accounting treatment of liabilities or of recorded assets is of public interest. In the event that such a change is not suitably explained to the House of Commons, an audit observation is expected.

289. The audit certificate is founded on the joint efforts of the Office. After the close of each fiscal year the audit supervisor responsible for the audit of the Minister of Finance's accounts provides other audit supervisors with listings of the balances the Minister plans to include in the Statement of Assets and Liabilities. The purpose is to establish that such balances are in agreement with the corresponding departmental open accounts. In turn, the audit supervisor examining Finance accounts is informed whenever an 'open account' balance appears to be wrongly classified. All staff members are expected to report any apparent omission; for example, when a vote is so applied that an Asset item is created without an appropriate open account being established—a loan is an illus-

tration. Because of the close relationships necessarily maintained in the audit which precedes the certifying of the Statement of Assets and Liabilities, what follows is a departure from the style employed in other parts of the Guide.

Assets

290. ***Working Capital Advances.***—These include revolving fund advances to departments and temporary advances to Crown corporations. In both cases an obligation is to establish the authority for an advance and that the maximum permissive has not been exceeded. Where the year's operation of a departmental working capital advance resulted in a loss, the circumstances are to be noted.

291. ***Loans to and Investments in Crown Agencies.***—Departmental accounts relating to these loans and investments are checked to establish, in each case:

(*a*) that the loan or investment was duly authorized by statute or by a specific parliamentary appropriation;

(*b*) that appropriate documents are on file with the department concerned, in the form of corporate notes or debentures, or share certificates;

(*c*) that terms of payment of principal and interest, in the case of a loan, and provisions for the surrender of profits, in the case of an investment, have been duly observed; and

(*d*) that outlays and receipts have been correctly and promptly recorded in the relative accounts.

292. In a corporate audit, year-end reconciliations are effected between liability balances shown by the corporation and the relative asset balance in Department of Finance records.

293. ***Other Loans and Investments.***—While individual items in this asset category sometimes present special audit problems, the audit procedure is, as a rule, similar to that outlined with respect to loans to and investments in Crown agencies, with special attention directed to the action taken (*a*) to collect or realize upon doubtful balances, and (*b*) to write down to non-active account balances which no longer may be regarded as active.

Liabilities

294. ***Deposit and Trust Accounts.***—A large part of the "open" accounts relating to liabilities are the departmental deposit

and trust accounts. The extent of examination necessary varies according to the nature of each account, but, in general, the purpose is to establish:

(*a*) the authority for the receipt of moneys;

(*b*) that deposits have been made promptly;

(*c*) that interest credits, if any, rest on due authority; and

(*d*) that payments from the account were made in accordance with the purpose of any indenture applicable.

295. In the case of a corporate audit, balances of deposit accounts maintained by the corporation are reconciled at the year-end with the relative liabilities balances in Department of Finance records.

296. ***Suspense Accounts.***—The check is of a nature to ensure that:

(*a*) transactions so recorded include only items of which the proper disposition cannot immediately be determined;

(*b*) items are cleared as soon as the proper disposition has been determined, e.g., by way of a credit to revenue or to a trust account; and

(*c*) transactions entered in a suspense account belong to the same category.

297. The word 'suspense' contemplates clearance within a reasonable time. The period will vary in accordance with surrounding circumstances, but once a supervisor of audit is of opinion that there has been unreasonable delay, the matter should be drawn to the notice of (*a*) the department concerned, and (*b*) the supervisor conducting the examination of Finance accounts.

Write-Down and Write-Up of Assets

298. Assets which are no longer considered to possess attributes of realizability or productivity, when written down in whole or in part to non-active accounts or to Consolidated Deficit Account, create a charge to expenditures of the year. The point of importance, in such a case, is the authority relied upon for the action taken. An authorization of Parliament is required when a write-down involves waiver of all rights to realize on an asset previously classified as realizable, or a transfer of a non-active balance to Consolidated Deficit Account even though, in the latter case, no expenditure charge results in the year of transfer and the action taken does not affect the Net Debt.

299. If authorized by statute, a write-down of a balance of a loan or advance to a non-active account may be accepted without question; as may also the writing-off of a loss to Consolidated Deficit Account when an appropriation is provided for the purpose. Where no authority is established, a duty exists to report the transaction to the House of Commons.

300. A write-up from non-active account to an asset account may call for audit notice because the charge or transfer to the non-active account had previously been certified to the House of Commons. Moreover, a write-up results in a credit to Revenue in the year and a reduction in Net Debt. For these reasons, the House of Commons is to be informed unless the Minister of Finance has already brought the matter to the notice of the House.

CROWN CORPORATIONS AUDITS

301. Some corporations are regulated by special Acts of Parliament, others are created by use of the Companies Act; but all, to a greater or less degree, are subject to the provisions of Part VIII of the FA Act. Annually, the corporations must present a balance sheet, a statement of income and expense and a statement of surplus. These are to contain such information as is required, by the Companies Act, to be presented by the directors at the annual meeting of any company incorporated under that Act. However, section 85 (2) of the FA Act empowers the "appropriate Minister" and the Minister of Finance to give directions "as to form", but until they give a direction, the form and material of the statements is a matter within the discretion of Management. The audit obligation to comment, if necessary, is not impaired by reason of any direction by the Ministers, but Management must comply with such direction.

302. ***Audit Directions.***—Section 87 of the FA Act directs that its provisions take the place, in the case of a letters patent corporation, of those set out in section 124 of the Companies Act. With respect to corporations created by special Acts, directions in section 87 supplement any given in such Acts. The material part of section 87 is:

> (1) The auditor shall report annually to the appropriate Minister the result of his examination of the accounts and financial statements of a corporation, and the report shall state whether in his opinion
>
> (*a*) proper books of account have been kept by the corporation;
>
> (*b*) the financial statements of the corporation
>
> (i) were prepared on a basis consistent with that of the preceding year and are in agreement with the books of account,
>
> (ii) in the case of the balance sheet, give a true and fair view of the state of the corporation's affairs as at the end of the financial year, and
>
> (iii) in the case of the statement of income and expense, give a true and fair view of the income and expense of the corporation for the financial year; and

(c) the transactions of the corporation that have come under his notice have been within the powers of the corporation under this Act and any other Act applicable to the corporation;

and the auditor shall call attention to any other matter falling within the scope of his examination that in his opinion should be brought to the attention of Parliament.

303. ***Answerability for Decisions.***—The use of corporate bodies to perform public services is by no means a recent innovation, but the device was not extensively utilized in Canada until after the C.N.R. was created. Sometimes Crown corporations draw their powers from the special Acts which create them; in other instances, a statute grants a power to create a corporation by means of the Companies Act, with a Minister answerable to Parliament for transactions of a corporation thus created.

304. The same ministerial obligation to Parliament does not exist with respect to every corporation created by means of special statute. A parliamentary distinction is drawn between 'public' and 'governmental' services, and sometimes the aim of a statute is to make a body of persons, rather than a Minister, responsible. The Broadcasting Corporation is an example. While the Governor in Council appoints the governors and concurs in the engagement of the general manager, the Government does not control operations:

It has been stated many times in this House that the Government does not attempt to dictate to the C.B.C. what will go out over its wires. (Prime Minister, Debates of January 26, 1953.)

However, the nature of the service is not always the yardstick. A few words in some section may be the significant ones; for example the National Harbours Board Act makes the Minister of Transport answerable to Parliament for the transactions of the Board, because section 3 declares the Board to be "under the direction of the Minister".

305. The significance of the foregoing arises when an auditor has to consider the authority relied on for a transaction. No special problem is present when a Minister has the supervision of the corporation, because, subject to special provisions, its status is akin to that of a department; but where an independent board directs, a distinction is to be drawn between Board and Management decisions. Dimock in "British Public Utilities" makes this observation with respect to the British Broadcasting Corporation:

The general responsibility of the Board of Governors is primarily over policy and results, not over the actual carrying out of that policy . . . Its role is to assume responsibility to Parliament and to the public for what takes place; and hence to keep a general oversight and to make suggestions. The initiative in matters of policy, program, and administration comes from officials. (p. 280)

In the event that a decision of an officer is involved, appropriate action is to bring it to the notice of a more senior officer within the corporation. For example, if it is a decision of the treasurer, the president should be informed, while if the president is the one responsible, then the matter should be brought to the notice of the board of directors, or the equivalent. If this is the final corporate authority, any further reference will be in the report on accounts, but where a corporation is one with share capital, a further intervening step is to inform the Minister, who is the representative shareholder.

306. ***Categories of Corporations.***—Part VIII of the FA Act divides corporations into three classes:

Departmental corporations: Those performing administrative, supervisory or regulatory services of a governmental nature.

Agency corporations: Those engaged in trading or service operations on a quasi-commercial basis or in procurement, construction or disposal activities on behalf of the Crown.

Proprietary corporations: Those managing lending or financial, commercial or industrial operations, etc., and, ordinarily, conducting operations out of corporate income as distinct from parliamentary votes.

For the financial transactions of the first two groups, the Cabinet has a much greater responsibility to Parliament than it has with respect to those in the Proprietary group. Schedules to the Act classify the corporations by name.

307. Not all corporations which existed when the FA Act received assent are listed therein. The explanation given by the Department of Finance to the Public Accounts Committee may have significance when other corporations are created in the future, therefore it is quoted:

In view of the rather special nature of the Board's functions, its relations with the producers, and their particular concern in its operation, it is not considered advisable to alter the existing relationship by making the provisions of the Crown Corporations Part applicable to the Canadian Wheat Board.

The Bank of Canada, of course, is a highly specialized corporation performing important banking functions. Its managerial set-up in relation to the Government is set out in considerable detail in the Bank of Canada Act, and it is not expected that it will call upon the Government for financial assistance.

The Industrial Development Bank is a subsidiary of the Bank of Canada and it was considered by the Minister desirable to treat it on the same basis as the Bank itself.

In regard to the Halifax Relief Commission and the Eastern Rockies Forest Conservation Board, those are bodies which have been established by the Federal Government in cooperation with Provincial Governments, and as it seemed that arrangements with respect to the control and regulation of such joint enterprises should not be made unilaterally, but rather on the basis of agreement with the two Governments concerned, they were not included in the schedules to the Bill.

308. ***The Statutory Powers of Corporations.***—A corporation created by Act of Parliament must operate within the powers granted by the statute to which it owes its existence. It has not all the rights and powers of an individual nor, generally, of a corporation created under the provisions of the Companies Act. Therefore, auditors should familiarize themselves with the powers set forth in (*a*) the statutes governing corporations created by special Act of Parliament, and (*b*) the Companies Act—in particular section 14. It should, however, be noted that Part VIII of the FA Act provides that:

(*a*) in the event of any conflict between provisions in sections 79 to 88 of the FA Act and those of any other Act, the provisions of the latter are applicable;

(*b*) agency corporations (listed in Schedule C) must submit operating budgets for approval by the appropriate Minister and the Minister of Finance;

(*c*) capital budgets are to be laid before Parliament;

(*d*) the Governor in Council may make regulations to regulate contractual commitments by agency corporations.

309. Another consideration to be borne in mind is that a Crown corporation is expected to take full advantage of any protective provisions in its statute or arising from its peculiar relationship to the Crown. To illustrate, a recent controversy in connection with BOAC (a United Kingdom public corporation) will be used. In the course of litigation (for damages resulting from injuries) a question arose as to whether BOAC should share liability with a contracting firm. BOAC contended that it could not be held liable because in order to make it—

a public corporation—a defendant, proceedings had to be commenced within a certain period of time and that had not been done. This defence was accepted, but a degree of public criticism resulted. "The Economist", however, correctly pointed out that:

> They cannot be blamed for raising the defence; it would be the duty of any auditor to criticise a public body which did not take full advantage of a provision in the law enabling it to resist a claim against it. (Issue of August 1, 1953.)

There is nothing novel in this. Many years ago a Canadian Government ship required and received assistance, but the department concerned contested the authority of a court to fix compensation. It was argued that in the circumstances it was bad taste to advance this defence, but the Judicial Committee of the Privy Council thought otherwise:

> No objection can properly be taken to the defence to this action. It is the duty of those who represent the Crown to place the privileges of the Crown very definitely before the Courts, and if the claim in the present case had been allowed to pass without the protest which has been made on behalf of the Crown, the case would undoubtedly have been quoted, and perhaps acted upon, in circumstances where it would not have been so appropriate to give a reward as in this instance. No observation can, therefore, be properly directed against those responsible for advising the Government to resist the present claim in the form in which it was made. (*"The Scotia"*)

310. ***Status of Corporate Moneys.***—The B.N.A. Act makes it obligatory that all public money collected be credited to Consolidated Revenue Fund and that all expenditures be authorized by Parliament. But the management of Consolidated Revenue Fund is wholly within the control of Parliament; therefore, when statutory directions permit a corporation to maintain bank accounts and account for its receipts, this is the equivalent of Parliament directing, as it sometimes does, that a special account be opened in Consolidated Revenue Fund and income from certain sources credited to it (the Old Age Security Fund is an example). Similarly when Parliament directs that a corporation pay its expenses out of corporate income, an appropriation of money results.

311. ***Advances for Governmental Purposes.***—An accountable advance to a Crown corporation for a governmental purpose is subject to the same statutory and executive directions as control the department which advanced the money. The corporation

is not required to deposit the money in a separate account, but is constantly accountable to the Government which, in turn, is answerable to Parliament. *Fox* v. *Newfoundland* provides an illustration as to the status of an accountable advance. The Government had established, by legislation, corporate bodies to provide educational facilities and made grants to them. These grants were paid over by the Minister of Finance directing transfers from the Government's account to those maintained for the corporate bodies in the same bank. The bank failed and the action was to determine whether the statutory bodies enjoyed the same priority as the Crown in the distribution of assets. It was decided that they did not, so far as general grants were concerned. However, the court took a different view with respect to grants for higher education. The Act directed that these special grants were to be disbursed in such manner as the Governor in Council should from time to time direct, and when the bank was declared insolvent, the boards' accounts included money from special grants. These sums were segregated by the court and, being property of the Government although outstanding as accountable advances, were held to enjoy the same status as moneys at credit in the Government's own account.

312. An allied type of financial transaction sometimes observed in an audit is when a corporation performs a service for the Crown and uses its own resources to finance the operation. Such an arrangement is one to be brought to the notice of the House unless the corporation is promptly reimbursed, because the action taken by-passes the exclusive power of Parliament to provide for public requirements. Moreover, should no recovery of the money be effected, the resources of the corporation being depleted, there may be an audit duty to report because such application of its money was not "within the powers of the corporation" (section 87 (1) of FA Act). The point is not whether the Government or a Minister may instruct a corporation to perform services for the Government but whether funds of the corporation may be applied to the purpose. Bearing in mind that Crown corporations' moneys form part of Consolidated Revenue Fund, an extract from a Privy Council decision is to the point:

> It has been a principle of the British constitution now for more than two centuries, a principle which their Lordships understand to have been inherited in the Constitution of New Zealand with the same stringency, that no money can be taken out of the Consolidated Fund into which the revenues of the State have been paid,

excepting under a distinct authorization from Parliament itself. The days are long gone by in which the Crown, or its servants, apart from Parliament, could give such an authorization or ratify the improper payment. Any payment out of the Consolidated Fund made without parliamentary authority is simply illegal and *ultra vires*. (*Auckland Harbour Board* v. *The King.*)

313. ***Contracts.***—Subject to the provisions of any statute applicable and, in the case of agency corporations, regulations made under the authority of section 83 of the FA Act, a Crown corporation's contracts are regulated by the general law applicable to private enterprise. A greater degree of board concurrence—minutes, or the like—is to be expected in the case of a purely administrative body than where the corporate function is commercial. Of course, neither corporation may contract for a purpose outside of its powers. Whenever audit opinion is sought of a proposal which is marginal, an auditor should favour literal application until a legal opinion indicates a more generous interpretation is permissive.

314. ***Future Commitments.***—Management of a corporation exercising statutory powers rarely may irrevocably bind its successors by means of an agreement or undertaking when such may affect policy. To illustrate, a New Zealand case will be used. The Wellington Harbour Board's staff contributed to a statutory pension scheme having specified pension scales which the Board might, on retirement of a contributor, supplement if it considered that desirable. The added cost was directed, by the statute, to be a charge to its revenues. The Board promised some employees that, as and when they reached pension age, supplementary awards would be made. To accumulate the necessary money, the Board set up a special account to which certain sums would be credited annually. A declaratory judgment as to the legality of the arrangement was sought. It was decided that:

> It is not until the employee retires that the Board can make such a special retiring allowance . . . It has often been laid down that the local authority cannot fetter the discretion of a future Board if a discretion is given to a Board. The other question put was whether the Board could set aside a special fund for that purpose. I am of the opinion that, though the Board may set aside a fund for that purpose, it cannot so earmark it as to prevent a future Board from making that fund available for other purposes. (*Wellington Harbour Board* v. *Solicitor General.*)

315. ***Audit Review of Powers.***—The foregoing may be used to poise the question: To what extent is an auditor expected to review the legal powers of a Crown corporation? It is a question of some nicety, especially as Management may feel that the auditor is going beyond his field. However, section 87 of the FA Act directs that the annual certificates state whether in the opinion of the auditor

> the transactions of the corporation that have come under his notice have been within the powers of the corporation under this Act and any other Act applicable to the corporation.

In the case described in the above paragraph, the setting up of a reserve was permissive but the promises to the staff were not. When a doubt is entertained, it should be forthwith suggested that the corporation secure legal opinion.

316. ***Resolutions.***—Should it be that a statute or a regulation makes reference to a "special resolution", and it is not defined, another New Zealand declaratory ruling provides a useful reference. An Act provided that a Board may, "by special resolution", fix a scale of charges; the question was: What is a special resolution? It was decided:

> By "special resolution" is meant a resolution that is passed specially, as distinguished from an ordinary resolution, which would be moved without notice on matters arising at a regular meeting of the Board. To constitute a special resolution, reasonable notice—say, fourteen days—should be given to each member of the Board of a special meeting to be held on a specified date to consider, and, if approved, to pass, as a special resolution (setting it out). It should be passed as a special resolution *eo nomine*, and communicated as such to each local authority as provided in section 85. (*Wanganiu Harbour Board* v. *Attorney General.*)

317. ***Bank Accounts.***—Section 81 of the FA Act permits a corporation, "with the approval of the Minister of Finance", to bank either with the Bank of Canada or with a "bank" in Canada, and also with a "financial institution" outside of Canada. A purpose of this section is to permit the Bank of Canada to accept the account; another is to keep the Minister in position to control selections of banks. The word "bank" presumably means a bank holding a charter granted by the Parliament of Canada. The Minister of Finance, however, may exercise a discretion in selecting a "financial institution" outside of Canada, but the context implies that the prime activity of the institution be that of banking.

318. ***Borrowings.***—Unless a statute provides a power to issue debentures, an audit presumption is that a Crown corporation lacks power to borrow on a long term basis. The question more likely to arise is whether short term bank loans or overdrafts are permissive to finance current operations. In the case of Companies Act corporations, section 14 permits corporations

> to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants and other negotiable or transferable instruments.

On the other hand, section 82 of the FA Act provides a scheme whereby the Government may advance up to $500,000 as working capital for "a period not exceeding twelve months". It may be that the intent is that this takes the place of section 14 of the Companies Act, but as $500,000 is far in excess of what some corporations might ever require and, conversely, much less than might be needed by others, it will be regarded that, should a borrowing take place either from the Government or a bank, audit notice need be taken only when

(*a*) the capacity to repay is doubtful, or

(*b*) a bank advance was arranged after the Government refused to make an advance under the authority of section 82.

319. ***Temporary Investments.***—A Crown corporation may from time to time have funds in excess of immediate requirements. Section 81(1) of the FA Act gives it power to have a bank account, which includes a right to open a savings account. Subsection 2 of the same section permits, on the demand of the Ministers, moneys to be temporarily held in Consolidated Revenue Fund, and moneys in that category are eligible to the interest benefits provided by section 20. On the other hand, it appears doubtful whether the Receiver General may pay interest on moneys voluntarily deposited when the sole purpose of the transaction is to earn interest.

320. Corporations, unless restricted by law, may make temporary investments in securities of or guaranteed by the Government of Canada, but avoidance of risk of capital impairment is expected. A British Public Accounts Committee once commented that a public body

> in the absence of an express direction from Parliament for its investment, would be liable to be called to account if any investment

were made which resulted in a diminution of the principal of the Fund. The risk of such loss by investments in Treasury Bills or Exchequer Bonds is much less than in the case of investments in securities of a fluctuating nature.

321. ***Profits.***—At one time it was regarded that a corporation providing a public service should not sell at a profit. The reasoning was that such profits had characteristics of a tax—Parliament alone has the power to impose a tax. Now, various Crown corporations are required to pay income tax! There continues, however, a duty on a parliamentary auditor to draw attention to inordinate profits, unless Parliament has created a corporation with a profit motive clearly associated with the corporate purpose.

322. Section 81(3) of the FA Act permits the Governor in Council to direct that

> a corporation shall pay to the Receiver General so much of the money administered by it as the appropriate Minister and the Minister of Finance consider to be in excess of the amount required for the purposes of the corporation, and any money so paid may be applied towards the discharge of any obligation of the corporation to Her Majesty, or may be applied as revenues of Canada.

This text is all-embracing and extends to moneys which, under the Companies Act, would not be available for declarations of dividends. However, it does not expand the powers of boards of directors. No audit exception need be taken to a distribution, by means of a dividend declaration, of surplus resulting from operations; but any other surrender of money is a policy, rather than a corporate decision.

323. ***Reserves.***—A Crown corporation exists to provide a public service, therefore it should arrange its finances so that it continues to be capable of providing service. For that reason, corporations should incorporate into selling prices the costs resulting from the depreciation of assets, etc., and make the necessary provision in its accounts. In the case of a commercial activity, there is an added reason: it is desirable that prices be computed in a manner comparable with practices in private enterprise.

324. Unless a direction is given to the corporation, for example, under the authority of section 84 of the FA Act, Management decides what shall be the provision for reserves for depreciation of assets, uncollectable accounts, etc. In the case of a

Crown corporation which is not primarily a trading corporation—an illustration is the Federal District Commission—the reserves may be restricted to those assets which are required for operational purposes. If a direction is given under section 84, the corporation must give effect to it. The section reads:

> Subject to any order of the Governor in Council made on the joint recommendation of the Minister of Finance and the appropriate Minister, a corporation may make provision for reserves for depreciation of assets, for uncollectable accounts and for other purposes.

325. ***Government Companies Operation Act.***—This statute is now restricted to those corporations incorporated under Part I of the Companies Act which are brought within its scope by proclamation. The provisions are with respect to staff:

(*a*) the corporation may, "notwithstanding the Civil Service Act or any other statute or law", employ officers and servants and fix rates of pay and conditions of employment;

(*b*) corporate employees, unless already contributors, are not eligible to the benefits of the Public Service Superannuation Act, but the corporation may, with the consent of the Governor in Council, establish a pension scheme;

(*c*) the Government Employees Compensation Act applies to employees of the corporation.

REPORTS AND RECORDS

326. An audit is made to permit certificates to be given and, sometimes, reports to be made to departments or corporations with respect to accounts scrutinized. It can happen that an audit is judged less by the skill employed than by the resulting report. Absolute accuracy is imperative, and to attain that, thoroughness must be practised in examinations, with audit notes founded exclusively on facts established. Should it be that an audit note is built around information provided either verbally or from files, that should be stated with suitable reference to the source.

327. When drafting a note on any subject, a few things to bear in mind are: (*a*) don't be hustled, (*b*) strive for simple presentation, (*c*) think over the points before writing, and (*d*) where practicable, in a lengthy note collect and summarize important findings and conclusions. Short words and sentences are steps towards a well written report. Except when communicating with an accountant or technical expert, the use of technical phrases and accounting jargon should be avoided.

328. Files must be adequately documented to substantiate statements in reports, but they should not be cluttered up with irrelevant or redundant material. Page reference to working papers should be noted opposite the relative comments in any draft report. Matters requiring attention in a subsequent audit should be held in a separate section of the file, together with the audit programme.

329. It is Audit Office practice to transfer auditors to other accounts from time to time. Therefore, it is advantageous to a person newly assigned to an audit to find in the file copies of statutes, regulations, rulings and official directions of concern to the accounts to be audited; also, a write-up of the accounting procedures, the methods employed in applying internal financial control and of the aims and objects of the audit.

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330. As audit notes usually are critical commentaries, auditors should note sources of information, dates, vouchers and other references, and amounts. Where practicable, copies or excerpts of letters or documents which are referred to or quoted should be attached, but only to the extent of practical usefulness.

331. Section 70 of the FA Act opens with these words:

> The Auditor General shall report annually to the House of Commons the results of his examinations and shall call attention to every case in which he has observed that . . .

This includes any information obtained by reading files, reports of internal auditors, cost audits, etc., or information received vicariously. Whether the source should or should not be revealed is a matter to be settled by considering surrounding circumstances, but, as a rule, no Audit Report treats with matters regarded as privileged by the House of Commons—this is a reason why Audit Office staff are expected to read with care those proceedings in the House which pertain to the production of papers and answers to Questions.

APPLYING STATUTES

332. The interpretation of statutes is a function of law officers, but as auditors constantly have to consider texts of statutes, a few aids towards establishing legislative intent are now given.

333. The statutory aid in construing statutes is the Interpretation Act, c. 158, R.S. However, many questions are answerable only by the application of long-established rules of law, as it is always to be presumed that Parliament does not intend any alteration in the rules or principles of the common law beyond what it expressly declares.

334. When seeking the aim of a section or Act, apply rules of grammar and common sense. If these do not solve doubts, an opinion should be sought from law officers. An auditor should keep an open mind by avoiding personal prejudices or considerations of compassion; he should be neither a 'hair-splitter' nor over-tolerant of administrative action. Often the Bill on which the Act is founded originated with the officers who administer it; therefore, the risk is present that they will tend to interpret in accord with what they planned to achieve, rather than by what the text recites.

335. The direction in section 15 of the Interpretation Act that all statutes shall

> receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act

relates to what may reasonably be presumed as Parliament's intent and not what the draftsman might have been thinking. An auditor risks a like pitfall if he allows himself to think in terms of what he considers Parliament ought to have said. The application of an Act may result in individual hardship or a failure to achieve fully the object of the legislation, but in that event the proper remedy is recourse to amending legislation.

336. When an auditor is examining a statute, he has certain words to value. He should not presume that Parliament contemplated that a section be susceptible to loose or inexact application, nor seize upon a single word or phrase and magnify

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its importance. The context and other parts of the statute should be correlated to the end that there is consistency throughout.

337. 'Shall' and 'may' are often perplexing expressions. Enactments are divisible into two general categories: mandatory and directory. An imperative enactment is one where the whole aim and object of Parliament would be plainly defeated if the command to do a thing in a particular manner did not imply a prohibition to do it in any other. In the application of a directory provision, the command is of such a nature that it is a mere direction (although 'shall' may be used) involving no invalidating consequence if disregarded—the offending officer may become liable to disciplinary action, but the transaction still is valid. A standard authority states it this way:

> When a public duty is imposed and the statute requires that it shall be performed in a certain manner, or within a certain time, or under other specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential and imperative.

338. ***Aids to Interpretation.***—Among the long established rules to which an auditor may turn when he has a perplexing problem are:

PREAMBLES.—The preamble to an Act may not prudently be regarded as an enactment, but it is a part of the Act. Coke colourfully described a preamble as a key to open the meaning of the makers of the Act and the mischiefs it was intended to remedy. Auditors may look to the preamble of an Act for guidance as to general intent, but they should found opinion on enactments in the Act.

MARGINAL NOTES.—The Interpretation Act states that these "shall form no part of the Act but shall be deemed to be inserted for convenience of reference only".

HEADINGS.—The precise significance of a heading is debatable, but auditors may safely treat prefatory words as intended to assist in explaining doubtful expressions in the body of a following section. Not so long ago it was said:

> Headnotes cannot control the plain meaning of the words of the enactment, though they may, in some cases, be looked upon in the light of preambles, if there is any ambiguity in the meaning of the sections on which they throw light.

PUNCTUATION.—Phrases and sentences are to be construed according to rules of grammar, but punctuation marks are inserted primarily to facilitate reading rather than to convey meaning. One authority years ago put it this way:

> To my mind it is perfectly clear that in an Act of Parliament there are no such things as brackets, any more than there are such things as stops.

But a more recent writer points out that this is inconsistent with modern practice where every Bill considered is in print complete with punctuation. To illustrate, he used the United States tariff schedule:

> Among the articles scheduled for admission free of duty were 'all foreign fruit-plants'. In the Act this appeared as 'all foreign fruit, plants'. As a consequence, all foreign bananas, oranges, lemons, etc., were imported free of duty; and it was not until heavy loss had been suffered by the Revenue Department that the mistake was rectified by another Act.

To read with the aid of punctuation marks is a normal habit, consequently an auditor may regard them as aids to elucidate the intent of the legislation. Punctuation is a matter of individual taste, therefore when an auditor considers that the punctuation of a sentence is of importance he should not test by applying his own preferences; instead, he should examine the style or form employed throughout the Act. If he observes that the form was varied in the particular sentence, some significance may be attached to the change.

DEFINITIONS.—A section of many Acts sets out definitions to be applied to certain words. The intent is to include or exclude something with respect to the inclusion or exclusion of which there is a doubt without such a definition. But it is always to be borne in mind that when the section opens with the words, 'In this Act, unless the context otherwise requires', the statutory definition may not be invariably applicable throughout.

When applying a definition section, it is of importance to note whether it opens with 'includes', 'means' or 'means and includes'. When the word 'includes' is used, the intent is that the word be given its ordinary meaning and also something else which it does not ordinarily mean, but which, for convenience, is declared to be included in it. When 'means' is used, the intent is *prima facie* restrictive. The legislative intent is that the meaning to be applied is that given. 'Means and includes', being a contradiction of terms, is rarely used, but in some Acts

it is. When the phrase is employed, the intent may prudently be regarded as intended to be an exhaustive description for the purposes of the Act. When, in addition to a general definition section, a Part of an Act has a special definition section, the latter takes precedence for the purposes of the Part.

Descriptions.—A problem often is the application of words which end a descriptive definition, or a listing of persons or things in an Act. A draftsman, whenever practicable, avoids enumerating particulars, because ultimately an omission turns up. Consequently, the practice is to use a generic term to describe the field, and to end the description with some general word. For example, the British Traffic Act, 1930, defines 'traffic sign' to include

> all signals, warning sign-posts, direction posts, signs or devices.

It was decided that the word 'devices' referred to things belonging to the species of signals, sign posts, etc., therefore a white painted line on a road was not a traffic sign. (This was an application of what is known as the *ejusdem generis* rule.) However, where general words are obviously not to be regarded as related to those enumerated—for example, 'or things of whatever description'—a different situation exists.

Another rule an auditor should heed arises where a statute describes, by rank, persons or things in descending order; any officer or thing of higher rank than the first-named is excluded. It has been held that when an Act referred to 'abbots, priors and other prelates of the Church', that did not include a bishop. Likewise, an enactment imposing duties on 'copper, brass, pewter, and tin, and on all other metals not enumerated' was declared inapplicable to precious metals such as gold and silver.

Proviso.—A proviso to a section is ordinarily to be regarded as having for its purpose that of creating an exception—to except out of the earlier part something which, but for the proviso, would be within it. Modern drafting practice is to strive to avoid use of a proviso in statutes.

Negative Sentences.—Particular attention is to be paid to sentences stated in the negative form. These convey the intent of strict compliance. A sentence affirmatively expressed may, as a rule, be given more generous application.

Special and General Enactments.—The rule is that special provisions in an Act take precedence over general provisions. It is application of the rule that general things do not derogate from special. This extends to treatment of statutes as a whole, as special Acts are not repealed or amended by general Acts unless there be some express reference to the previous legislation.

Schedules.—The schedule to an Act may provide texts of forms to be used in applying the Act. It is prudent to presume that no material departure from a text so provided is permissive. In other cases schedules consist of particulars. In these instances the adoption of schedules may have been to facilitate legislative consideration. A schedule is part of the Act and is as much an enactment as any other part. However, should there be contradiction between the terms of the schedule and the enacting provision in the Act itself, auditors may prudently treat the direction in the body of the Act as taking precedence, because a presumption is that closer parliamentary attention was directed to the body of the Act than to the schedules.

Public and Private Acts.—'Public General Acts' are those which are unlimited in their effect. Almost invariably these Acts originate as Government legislation, but only in the case of fiscal legislation is that a requisite. 'Local and Private Acts' either relate to a limited area or to the affairs of named individuals, and take their origin in petitions, with parliamentary committees considering representations for and against the petition. Rarely has an auditor to consider these Acts. When he does, the rule applicable is:

> In the case of a private Act, which is obtained by persons for their own benefit, you construe more strictly provisions which they allege to be for their benefit, because the persons who obtain a private Act ought to take care that it is so worded that that which they desire to obtain for themselves is plainly stated in it. But when the construction is perfectly clear there is no difference between the modes of construing a public Act and a private Act.

339. *Revised Statutes.*—In 1948 Parliament created a Statute Revision Commission to "revise, classify and consolidate" public general statutes included in the 1927 Revised Statutes and legislation subsequently enacted. The Commission was granted the power to make "such alterations" in language as are requisite in order to preserve a uniform mode of expression, and also "such minor amendments" as may be considered necessary:

to bring out more clearly what it deems to be the intention of Parliament or to reconcile seemingly inconsistent enactments or to correct clerical or typographical errors.

340. Section 6 provides that the revision take effect when proclaimed. A resulting proclamation fixed September 15, 1953, as the date.

Chapter 116, Revised Statutes of Canada 1952

An Act to Provide for the Financial Administration of the Government of Canada, the Audit of the Public Accounts and the Financial Control of Crown Corporations.

[*Assented to 21st December, 1951.*]

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short title.

1. This Act may be cited as the *Financial Administration Act.*

INTERPRETATION.

Definitions.

2. In this Act

"appropriate Minister".

(*a*) "appropriate Minister" means

(i) with respect to a department mentioned in subparagraph (i) of paragraph (*f*), the Minister presiding over the department,

(ii) with respect to any other department, the Minister designated by the Governor in Council as the appropriate Minister,

(iii) with respect to the Senate and the House of Commons, the respective Speaker, and with respect to the Library of Parliament, the Speakers of the Senate and the House of Commons, and

(iv) with respect to a corporation to which Part VIII applies, the Minister designated by the Governor in Council as the appropriate Minister;

"appropriation".

(*b*) "appropriation" means any authority of Parliament to pay money out of the Consolidated Revenue Fund;

"authorized agent".

(*c*) "authorized agent" means any person authorized by the Minister to accept subscriptions for or make sales of securities;

"Comptroller".

(*d*) "Comptroller" means the Comptroller of the Treasury appointed under this Act;

"Consolidated Revenue Fund".

(*e*) "Consolidated Revenue Fund" means the aggregate of all public moneys that are on deposit at the credit of the Receiver General;

"department".

(*f*) "department" means

(i) any of the departments named in Schedule A,

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(ii) any other division or branch of the public service of Canada, including a commission appointed under the *Inquiries Act*, designated by the Governor in Council as a department for the purposes of this Act,

(iii) the staffs of the Senate, the House of Commons and the Library of Parliament, and

(iv) any corporation named in Schedule B;

"fiscal agent". (g) "fiscal agent" means the Bank of Canada and a fiscal agent appointed under Part IV;

"fiscal year". (h) "fiscal year" means the period from the first day of April in one year to the thirty-first day of March in the next year;

"Minister". (i) "Minister" means the Minister of Finance and Receiver General;

"money". (j) "money" includes negotiable instruments;

"money paid to Canada for a special purpose". (k) "money paid to Canada for a special purpose" includes all money that is paid to a public officer under or pursuant to a statute, trust, treaty, undertaking, or contract, and is to be disbursed for a purpose specified in or pursuant to such statute, trust, treaty, undertaking or contract;

"negotiable instrument". (l) "negotiable instrument" includes any cheque, draft, traveller's cheque, bill of exchange, postal note, money order, postal remittance and any other similar instrument;

"public money". (m) "public money" means all money belonging to Canada received or collected by the Receiver General or any other public officer in his official capacity or any person authorized to receive or collect such money, and includes

(i) duties and revenues of Canada,

(ii) money borrowed by Canada or received through the issue or sale of securities,

(iii) money received or collected for or on behalf of Canada, and

(iv) money paid to Canada for a special purpose;

"public officer". (n) "public officer" includes a Minister and any person employed in the public service of Canada;

"registrar". (o) "registrar" means the Bank of Canada and a registrar appointed under Part IV; and

"securities". (p) "securities" means securities of Canada and includes bonds, notes, deposit certificates, non-interest bearing certificates, debentures, treasury bills, treasury notes and any other security representing part of the public debt of Canada.

PART I

Organization

Treasury Board.

Treasury Board.

3. (1) There shall be a board called the Treasury Board, consisting of the Minister of Finance, who is the Chairman, and any five members of the Queen's Privy Council for Canada, who may be nominated from time to time by the Governor in Council.

Alternate members.

(2) The Governor in Council may nominate such additional members of the Queen's Privy Council for Canada as he sees fit to be alternates to serve in the place of members of the Board.

Rules of procedure.

(3) Subject to the terms of this Act and any directions of the Governor in Council, the Treasury Board may determine its own rules and methods of procedure.

Staff.

4. The Minister may designate an officer of the Department of Finance to be Secretary of the Treasury Board, and shall from among the persons employed in the Department of Finance provide the Board with such other employees as are necessary for the proper conduct of the business of the Board.

Duties of Treasury Board.

5. (1) The Treasury Board shall act as a committee of the Queen's Privy Council for Canada on all matters relating to finance, revenues, estimates, expenditures and financial commitments, accounts, establishments, the terms and conditions of employment of persons in the public service, and general administrative policy in the public service referred to the Board by the Governor in Council or on which the Board considers it desirable to report to the Governor in Council, or on which the Board considers it necessary to act under powers conferred by this or any other Act.

Authority under other Acts.

(2) The Governor in Council may authorize the Treasury Board to exercise all or any of the powers, other than powers of appointment, of the Governor in Council under the *Civil Service Act*, the *Public Service Superannuation Act*, the *Defence Services Pension Act*, and Parts II to VI of the *Royal Canadian Mounted Police Act*.

Form of accounts of Canada.

(3) The Treasury Board may prescribe from time to time the manner and form in which the accounts of Canada and the accounts of the several departments shall be kept, and may direct any person receiving, managing or disbursing public money to keep any books, records or accounts that the Board considers necessary.

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Board subject to directions of Governor in Council.

(4) The Treasury Board in the exercise of its powers under this or any other statute is subject to any direction given to it by the Governor in Council, and the Governor in Council may by Order amend or revoke any action of the Board.

Board may require production of documents.

6. The Treasury Board may require from any public officer or any agent of Her Majesty any account, return, statement, document, report or information that the Board considers necessary for the due performance of its duties.

Regulations.

7. The Treasury Board may make regulations

(a) respecting the collection, management and administration of, and the accounting for, public money;

(b) respecting the keeping of records of property of Her Majesty;

(c) subject to any other Act, prescribing rates of compensation, hours of work and other conditions of employment of persons in the public service;

(d) notwithstanding the *Civil Service Act*,

(i) authorizing the payment to persons in the public service of compensation or other rewards for inventions or practical suggestions for improvements, and

(ii) governing payments to persons in the public service by way of reimbursement for travelling or other expenses and allowances to meet special expenses arising out of their duties; and

(e) subject to any other Act, for any other purpose necessary for the efficient administration of the public service.

Department of Finance.

Department established.

8. There shall be a department of the Government of Canada called the Department of Finance over which the Minister of Finance and Receiver General appointed by commission under the Great Seal of Canada shall preside.

Management.

9. The Minister has the management and direction of the Department of Finance, the management of the Consolidated Revenue Fund and the supervision, control and direction of all matters relating to the financial affairs of Canada not by law assigned to any other Minister.

Deputy Minister.

10. (1) The Governor in Council may appoint an officer, called the Deputy Minister of Finance and Receiver General, to be the deputy head of the Department of Finance and to hold office during pleasure.

Other officers, clerks and employees.

(2) Subject to section eleven, such other officers and employees as are necessary for the proper conduct of the business of the Department shall be appointed in accordance with the provisions of the *Civil Service Act*.

Comptroller of the Treasury.

11. (1) The Governor in Council shall appoint as an officer of the Department of Finance an officer called the Comptroller of the Treasury.

Salary.

(2) The salary of the Comptroller shall be fixed by the Governor in Council.

Tenure.

(3) The Comptroller shall be appointed to hold office during good behaviour, but he is removable by the Governor in Council for misbehaviour or for incapacity, inability or failure to perform his duties properly, or for other cause.

Removal.

(4) Where the Comptroller is removed from office, the Order in Council providing for his removal and the documents relating thereto shall be laid before Parliament within fifteen days after it is made, or if Parliament is not then in session, within fifteen days after the commencement of the next ensuing session.

Acting Comptroller.

(5) The Governor in Council may appoint a person to act as Comptroller during the illness, incapacity or other absence of the Comptroller, or during a vacancy in the office of Comptroller.

Access to books and records.

12. Notwithstanding any Act, the Comptroller is entitled to free access at all convenient times to all files, documents and other records relating to the accounts of every department, and he is also entitled to require and receive from members of the public service such information, reports and explanations as he may deem necessary for the proper performance of his duties.

Stationing of officers in other departments.

13. The Comptroller may station in any department any person employed in his office to enable him more effectively to carry out his duties, and the department shall provide the necessary office accommodation for any person so stationed.

Oath of secrecy.

14. (1) The Comptroller shall require every person employed in his office who is to examine the accounts of a department pursuant to this Act to comply with any security requirements applicable to, and to take any oath of secrecy required to be taken by, persons employed in that department.

Suspension.

(2) The Comptroller may suspend from the performance of his duties any person employed in his office.

15. On the request of the appropriate Minister and with the approval of the Minister of Finance, the Comptroller may

Accounting services.

(a) provide accounting and other services in connection with the collection and accounting of public money for a department, and

(b) examine the collecting and accounting practices applied in a department, and report thereon to the appropriate Minister.

PART II.

Public Money.

Public money to be deposited.

16. (1) Subject to this Part, all public money shall be deposited to the credit of the Receiver General.

Establishment of accounts.

(2) The Minister shall establish, in the name of the Receiver General, accounts with such banks and fiscal agents as he designates for the deposit of public money.

Record of public money collected.

(3) Every person who collects or receives public money shall keep a record of receipts and deposits thereof in such form and manner as the Treasury Board may prescribe by regulation.

Duty of persons collecting public money.

(4) Every person employed in the collection or management or charged with the receipt of public money and every other person who collects or receives public money shall pay all public money coming into his hands to the credit of the Receiver General through such officers, banks or persons and in such manner as the Minister directs.

Minister may acquire securities.

17. (1) The Minister may, when he deems it advisable for the sound and efficient management of public money or the public debt, purchase, acquire and hold securities and pay therefor out of the Consolidated Revenue Fund.

Sale of securities.

(2) The Minister may sell any securities purchased, acquired or held pursuant to subsection one, and the proceeds of the sales shall be deposited to the credit of the Receiver General.

Profit and loss.

(3) Any net profit resulting in any fiscal year from the purchase, holding or sale of securities pursuant to this section shall be credited to the revenues of that fiscal year, and any net loss resulting in any fiscal year from such purchase, holding or sale shall be charged to an appropriation provided by Parliament for the purpose.

How profit and loss determined.

(4) For the purposes of subsection three, the net profit or loss in any fiscal year shall be determined by

taking into account realized profits and losses on securities sold, the amortization applicable to the fiscal year of premiums and discounts on securities, and interest applicable to the fiscal year.

Services.

18. Where a service is provided by Her Majesty to any person and the Governor in Council is of opinion that the whole or part of the cost of the service should be borne by the person to whom it is provided, the Governor in Council may, subject to the provisions of any Act relating to that service, by regulation prescribe the fee that may be charged for the service.

Return of deposits.

19. (1) Where money is received by a public officer from any person as a deposit to ensure the doing of any act or thing, the public officer shall hold or dispose of the money in accordance with regulations of the Treasury Board.

Return of money paid for purposes not fulfilled.

(2) Where money is paid by any person to a public officer for any purpose that is not fulfilled, the money may, in accordance with regulations of the Treasury Board, be returned or repaid to that person, less such sum as in the opinion of the Board is properly attributable to any service rendered.

Return of non-public money.

(3) Money paid to the credit of the Receiver General and not being public money may be returned or repaid in accordance with regulations of the Treasury Board.

Money received for special purpose.

20. (1) Money received by or on behalf of Her Majesty for a special purpose and paid into the Consolidated Revenue Fund may be paid out of the Consolidated Revenue Fund for that purpose, subject to the provisions of any statute applicable thereto.

Interest.

(2) Subject to any other Act, interest may be allowed and paid from the Consolidated Revenue Fund in respect of money to which subsection one applies, in accordance with and at rates fixed by the Minister with the approval of the Governor in Council.

Refund of money paid in respect of proceedings in Parliament.

21. Where the Senate or House of Commons, by resolution or pursuant to any rule or standing order, authorizes a refund of public money that was received in respect of any proceedings before Parliament, the Minister may pay the refund out of the Consolidated Revenue Fund.

Remission of taxes and penalties.

22. (1) The Governor in Council on the recommendation of the Treasury Board, whenever he considers it in the public interest, may remit any tax, fee or penalty.

Remission may be partial, etc.

(2) A remission pursuant to this section may be total or partial, conditional or unconditional, and may be granted

(a) before, after or pending any suit or proceeding for the recovery of the tax, fee or penalty in respect of which it is granted,

(b) before or after any payment thereof has been made or enforced by process or execution, and

(c) in the case of a tax or fee, in any particular case or class of case and before the liability therefor arises.

Form of remission.

(3) A remission pursuant to this section may be granted

(a) by forbearing to institute a suit or proceeding for the recovery of the tax, fee or penalty in in respect of which the remission is granted,

(b) by delaying, staying or discontinuing any suit or proceeding already instituted,

(c) by forbearing to enforce, staying or abandoning any execution or process upon any judgment.

(d) by the entry of satisfaction upon any judgment, or

(e) by repaying any sum of money paid to or recovered by the Minister for the tax, fee or penalty.

Conditional remission.

(4) Where a remission is granted under this section subject to a condition, and the condition is not performed, it may be enforced, or all proceedings may be had as if there had been no remission.

Effect of remission.

(5) A conditional remission, upon performance of the condition, and an unconditional remission, have effect as if the remission was made after the tax, fee or penalty in respect of which it was granted had been sued for and recovered.

Customs and Excise.

(6) No tax paid to Her Majesty on any goods shall be remitted by reason only that after the payment of the tax and after release from the control of customs or excise officers, the goods were lost or destroyed.

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(7) Remissions granted under this or any other Act may be paid out of the Consolidated Revenue Fund.

Report.

(8) A statement of each remission of one thousand dollars or more granted under this section shall be reported to the House of Commons in the Public Accounts.

Effect of remission.

(9) Where a penalty imposed by any law relating to the revenue has been wholly and unconditionally remitted pursuant to this section, the remission has the effect of a pardon for the offence for which the penalty was incurred, and thereafter the offence has no legal effect prejudicial to the person to whom the remission was granted.

"tax" and "penalty" defined.

(10) In this section "tax" includes any tax, impost, duty or toll payable to Her Majesty, imposed or authorized to be imposed by any Act of Parliament, and "penalty" includes any forfeiture or pecuniary penalty imposed or authorized to be imposed by any Act of Parliament for any contravention of the laws relating to the collection of the revenue, or to the management of any public work producing toll or revenue, notwithstanding that part of such forfeiture or penalty is payable to the informer or prosecutor, or to any other person.

Uncollectable debts.

23. (1) The Governor in Council, on the recommendation of the Treasury Board, may, if he considers it in the public interest, delete from the accounts, in whole or in part, any obligation or debt due to Her Majesty or any claim by Her Majesty,

(*a*) that does not exceed five hundred dollars and has been outstanding for five years or more, or

(*b*) that does not exceed one thousand dollars and has been outstanding for ten years or more.

Report.

(2) The obligations, debts and claims deleted from the Public Accounts under this section during any year shall be reported in the Public Accounts for that year.

PART III

Public Disbursements.

No payment out of C.R.F. without authority from Parliament.

24. Subject to the British North America Acts, 1867 to 1951, no payments shall be made out of the Consolidated Revenue Fund without the authority of Parliament.

Estimates to be for fiscal year.

25. All estimates of expenditures submitted to Parliament shall be for the services coming in course of payment during the fiscal year.

Warrant of Governor General.

26. Where an appropriation is made for any purpose in any Act of Parliament for granting to Her Majesty any sum of money to defray expenses of the public service for a fiscal year, no payment shall be made pursuant to that appropriation out of the Consolidated Revenue Fund unless a warrant, prepared on the order of the Governor in Council, has been signed by the Governor General authorizing expenditures to be charged against the appropriation, but no payments in excess of the amount of expenditures so authorized shall be made.

Payment of guarantee.

27. Where a guarantee has been given under the authority of Parliament by or on behalf of Her Majesty for the payment of any debt or obligation, any amount required to be paid by the terms of the guarantee may, subject to the Act authorizing the guarantee, be paid out of the Consolidated Revenue Fund.

Urgent expenditure not provided for.

28. (1) Where an accident happens to any public work or building when Parliament is not in session and an expenditure for the repair or renewal thereof is urgently required, or where any other matter arises when Parliament is not in session in respect of which an expenditure not foreseen or provided for by Parliament is urgently required for the public good, the Governor in Council, upon the report of the Minister that there is no appropriation for the expenditure, and the report of the appropriate Minister that the expenditure is urgently required, may order a special warrant to be prepared to be signed by the Governor General authorizing the payment of the amount estimated to be required for such expenditure.

Special warrant.

(2) A special warrant issued pursuant to this section shall for the purposes of this Act be deemed to be an appropriation for the fiscal year in which the warrant is issued.

Publication and report to House of Commons.

(3) Every warrant issued under this section shall be published in the *Canada Gazette* within thirty days after it is issued, and a statement showing all warrants issued under this section and the amounts thereof shall be laid by the Minister before the House of Commons within fifteen days after the commencement of the next ensuing session of Parliament.

When Parliament deemed not in session.

(4) For the purposes of this section Parliament shall be deemed to be not in session when it is under adjournment *sine die* or to a day more than two weeks after the day the accident happened or the other matter arose.

Appropriation allotments.

29. At the commencement of each fiscal year or at such other times as the Treasury Board may direct, the deputy head or other officer charged with the administration of a service for which there is an appropriation by Parliament or an item included in Estimates then before the House of Commons shall prepare and submit to the Treasury Board through the Comptroller a division of such appropriation or item into allotments in the form detailed in the Estimates submitted to Parliament for such appropriation or item, or in such other form as the Board may prescribe, and when approved by the Board the allotments shall not be varied or amended without the approval of the Board, and the expenditures charged to the appropriation shall be limited to the amounts of such allotments.

No contract unless Comptroller certifies.

30. (1) No contract providing for the payment of any money by Her Majesty shall be entered into or have any force or effect unless the Comptroller certifies that there is a sufficient unencumbered balance available out of an appropriation or out of an item included in Estimates before the House of Commons to discharge any

commitments under such contract that would, under the provisions thereof, come in course of payment during the fiscal year in which the contract was entered into.

Contracts to be submitted to Comptroller.

(2) Every contract involving the payment of money by Her Majesty shall be submitted to the Comptroller as soon as it is made or entered into, unless the Comptroller certifies that he does not require it.

Record of commitments.

(3) The Comptroller shall establish and maintain a record of all commitments chargeable to each appropriation.

Where immediate expenditure required.

(4) Where the Comptroller is satisfied that an agreement was entered into in order to defray an immediate expenditure that, through accident to public property or other emergency, was necessary to protect such property or to provide for such emergency, he may issue his certificate accordingly and thereupon the agreement is exempt from the operation of subsection one from the time the agreement was entered into.

Requisitions.

31. (1) No charge shall be made against an appropriation except upon the requisition of the appropriate Minister of the department for which the appropriation was made, or by a person authorized by him in writing.

Form.

(2) Every requisition for a payment out of the Consolidated Revenue Fund shall be in such form, accompanied by such documents and certified in such manner as the Comptroller may require.

When requisition to be rejected.

(3) The Comptroller shall reject a requisition if he is of the opinion that the payment

(*a*) would not be a lawful charge against the appropriation,

(*b*) would result in an expenditure in excess of the appropriation, or

(*c*) would reduce the balance available in the appropriation so that it would not be sufficient to meet the commitments charged against it.

Reference to Treasury Board.

(4) The Comptroller may transmit to the Treasury Board any requisition with respect to which he desires the direction of the Board, and the Board may order that payment be made or refused.

Idem.

(5) Where the Comptroller

(*a*) declines to make a payment,

(*b*) disallows an item in an account, or

(*c*) refuses to give a certificate required by this Act,

the appropriate Minister of the department concerned may report the circumstances to the Treasury Board for its decision, and the Board may confirm or overrule the action of the Comptroller and give such directions as are necessary to carry out its decision.

Expenses of Parliament.

(6) Whenever the Comptroller is of the opinion that a doubt exists as to the legality or otherwise of a proposed charge to an appropriation provided for the expenses of the Senate, the House of Commons or the Library of Parliament, he shall forthwith, through the Minister, draw the matter to the attention of the appropriate Minister who shall obtain a decision in accordance with such procedure as may from time to time be prescribed by the Senate or the House of Commons as the case may be or, in the case of the Library of Parliament, by the Senate and the House of Commons, and the Comptroller shall act in accordance with the decision.

Cost audits.

(7) Where, in respect of any contract under which a cost audit is required to be made, the Comptroller reports that any costs or charges claimed by the contractor should not in the opinion of the Comptroller be allowed, such costs or charges shall not be allowed to the contractor unless the Treasury Board otherwise directs.

Payment for work or goods.

32. No payment shall be made for the performance of work or the supply of goods, whether under contract or not, in connection with any part of the public service, unless, in addition to any other voucher or certificate that is required, the deputy of the appropriate Minister or other officer authorized by such Minister certifies

(*a*) that the work has been performed or the material supplied or both, as the case may be, and that the price charged is according to contract, or if not specified by contract, is reasonable, or

(*b*) where a payment is to be made before completion of the work or delivery of the goods, that the payment is in accordance with the contract.

Form of payments out of C.R.F.

33. (1) Every payment pursuant to an appropriation except a payment made under subsection two, shall be made under the direction and control of the Comptroller by cheque drawn on the account of the Receiver General or other instrument, in such form and authenticated in such manner as the Treasury Board directs.

Where cheques, etc. payable.

(2) Where an instrument issued under subsection one is presented by a bank to the Receiver General for payment, the Receiver General, or an officer authorized by him, may pay the instrument out of the Consolidated Revenue Fund.

Cancelled cheques, etc.

34. (1) Every cheque or other instrument issued under the direction of the Comptroller, when paid, shall be delivered into the custody of the Minister for examination and adjustment with the statements of cheques or other instruments issued.

Destruction.

(2) The Treasury Board on the recommendation of the Auditor General may make regulations governing the destruction from time to time of such cheques or other instruments.

Lapsing of appropriations.

35. The balance of an appropriation granted for a fiscal year that remains unexpended at the end of the fiscal year shall lapse, except that during the thirty days immediately following the end of the fiscal year a payment may be made under the appropriation for the purpose of discharging a debt payable

(*a*) during or prior to the fiscal year, or

(*b*) during the said thirty days for goods received or services rendered prior to the end of the fiscal year,

and such payment may be charged in the accounts for the fiscal year.

Accountable advances.

36. (1) The Treasury Board may make regulations authorizing the making of accountable advances chargeable to the appropriation for the service in respect of which the advance is made.

Repayment.

(2) An advance for which an accounting has not been made at the termination of the fiscal year in which it was made shall be repaid or accounted for within thirty days thereafter or within such additional number of days, not exceeding thirty, as the Comptroller may fix in any particular case or class of case.

Recovery.

(3) The Comptroller may recover any accountable advance or any portion thereof that is not repaid or accounted for as required by subsection two out of any moneys payable by Her Majesty to the person to whom the advance was made.

Report.

(4) Every accountable advance that is not repaid or accounted for as required by this section shall be reported in the Public Accounts.

Refunds.

37. An amount received as a refund or repayment of an expenditure or advance and deposited to the credit of the Receiver General shall be included in the unexpended balance of the appropriation against which it was charged.

Term of contract that money available.

38. It is a term of every contract providing for the payment of any money by Her Majesty that payment thereunder is subject to there being an appropriation for the particular service for the fiscal year in which any commitment thereunder would come in course of payment.

Regulations *re* conditions under which contracts awarded.

39. The Governor in Council may make regulations with respect to the conditions under which contracts may be entered into and, notwithstanding any other Act,

(*a*) may direct that no contract by the terms of which payments are required in excess of such amount or amounts as the Governor in Council may prescribe shall be entered into or have any force or effect unless entry into the contract has been approved by the Governor in Council or the Treasury Board, and

(*b*) may make regulations with respect to the security to be given to and in the name of Her Majesty to secure the due performance of contracts.

Holdbacks.

40. Where a payment under a contract is withheld to ensure the due performance of the contract, the payment may, subject to this Act, be charged to the appropriation for that contract, and the amount so charged may be credited to a special account in the Consolidated Revenue Fund, to be paid out in accordance with the contract under regulations of the Treasury Board.

PART IV.

Public Debt.

No money to be borrowed or security issued without authority of Parliament.

41. No money shall be borrowed or security issued by or on behalf of Her Majesty without the authority of Parliament.

The raising of loans.

42. Where authority is conferred by Parliament to borrow money on behalf of Her Majesty, the Governor in Council, subject to the Act authorizing the borrowing, may authorize the Minister

(*a*) to borrow the money by the issue and sale of securities in such form, for such separate sums, at such rate of interest and upon such other terms and conditions as the Governor in Council may approve, and

(*b*) to enter into such contracts or agreements relating to the borrowing of the money or the issue or sale of securities relating thereto on such terms and conditions as the Governor in Council may approve.

Loans for redemption of securities.

43. The Governor in Council may authorize the Minister to borrow such sums of money as are required for the payment of any securities that were issued under the authority of Parliament, other than section forty-four, and are maturing or have been called for redemption.

Temporary loans.

44. Where it appears to the Governor in Council that the Consolidated Revenue Fund will be insufficient to meet the disbursements lawfully authorized to be made from it, the Governor in Council may authorize the Minister to borrow, at such rate of interest and on such terms and conditions as the Governor in Council may approve, for a period not exceeding six months, an amount not exceeding such amount as he deems necessary to ensure that the Consolidated Revenue Fund will be sufficient to meet those disbursements.

Report to Parliament.

45. An annual statement of all borrowing transactions on behalf of Her Majesty shall be included in the Public Accounts.

Signing securities.

46. (1) Securities issued under the authority of this Part shall be signed by the Deputy Minister of Finance or an officer of the Department of Finance designated by the Governor in Council to sign on behalf of the Deputy Minister of Finance, and shall be countersigned by such officer of the Department of Finance or other person as the Governor in Council designates for that purpose.

Facsimile signatures.

(2) The Minister may direct that there be substituted for signatures in the proper handwriting of one or both of the persons authorized to sign or countersign securities under this section, facsimiles thereof printed from engraving.

Printing of signatures.

(3) Where both the signature and countersignature on a security issued under this section are to be printed, they shall be printed, together with a distinguishing mark, from engraving, on the securities after they have been delivered to the Minister, a registrar or a fiscal agent and while the securities are in the custody and control of the Minister, registrar or fiscal agent.

Registrars and fiscal agents.

47. The Governor in Council may

(*a*) appoint one or more registrars to perform such services in respect of the registration of loans as the Governor in Council may prescribe,

(*b*) appoint one or more fiscal agents to perform such services in respect of loans as the Governor in Council may prescribe, and

(*c*) fix the remuneration or compensation of any registrar or fiscal agent appointed under this section.

Records of money borrowed.

48. (1) The Minister shall cause to be maintained a system of books and records

(*a*) showing all money authorized by Parliament to be borrowed by the issue and sale of securities,

(*b*) containing a description and record of all money so borrowed and securities issued, and

(*c*) showing all amounts paid in respect of the principal of or interest on all money so borrowed.

Accounting by fiscal agents and registrars.

(2) Every fiscal agent and registrar shall annually and as often as required by the Minister give to the Minister an accounting, in such form and terms and containing such information as the Minister prescribes, of all his transactions as fiscal agent or registrar.

Sinking fund.

49. The Governor in Council may provide for the creation and management of a sinking fund with respect to any issue of securities or with respect to all securities issued.

Borrowed money and interest charge on C.R.F.

50. The payment of all money borrowed and interest thereon and of the principal of and interest on all securities issued by or on behalf of Her Majesty with the authority of Parliament is a charge on and payable out of the Consolidated Revenue Fund.

Payment of loan expenses out of C.R.F.

51. All money required under section forty-nine to provide a sinking fund or other means of securing repayment of securities, the remuneration and compensation of registrars and fiscal agents appointed under section forty-seven and all costs, expenses and charges incurred in the negotiation or raising of loans or in the issue, redemption, servicing, payment and management of any loan and any securities issued in respect thereof, may, with the authority of the Governor in Council, be paid out of the Consolidated Revenue Fund.

Payment for securities to agent or by salary deduction.

52. Where it is provided by a prospectus or other official notice issued by or under the authority of the Minister that a subscriber may purchase securities

(*a*) by payments to an authorized agent, or

(*b*) by deductions from the remuneration of the subscriber by his employer,

the amount of any such payment or deduction that has not been accounted for by the delivery of securities to the subscriber or repaid to the subscriber shall be deemed to be money received in trust for Her Majesty by the agent or employer for which he is accountable to Her Majesty under section eighty-nine, and for the purpose of the *Bankruptcy Act*, and the *Winding-up Act*, where the money paid or deducted cannot be identified among the assets of the employer or agent, a portion of the said assets equal in value to the amount of the payment or deduction shall be deemed to be segregated and held in trust for Her Majesty.

Investors' Indemnity Account.

53. There shall be established in the Consolidated Revenue Fund an account to be known as the Investors' Indemnity Account to which shall be credited the sum

of twenty-five thousand dollars, such further amounts as are appropriated by Parliament for the purposes of this section, and any recoveries of the losses referred to in section fifty-four.

Payment of losses.

54. The Minister may, in accordance with and subject to the regulations, pay out of the Investors' Indemnity Account any losses sustained by subscribers for securities who have paid all or part of the purchase price of such securities but have not received the security or repayment of the amount so paid, and losses sustained by any person in the redemption of securities.

Not bound to execute trusts.

55. Her Majesty and a fiscal agent or registrar acting as such are not bound to see to the execution of any express or implied trust to which any securities are subject.

Regulations.

56. The Governor in Council may make such regulations as he deems necessary to provide for the management of the public debt of Canada and the payment of interest thereon and, without limiting the generality of the foregoing, may make regulations

(*a*) for the inscription or registration of securities and prescribing the effect of such inscription or registration,

(*b*) for the transfer, transmission, exchange, redemption, cancellation and destruction of any securities, and, without limiting the generality of the foregoing,

(i) for the transmission, transfer or redemption of securities pursuant to judgment or as the result of the death, dissolution or bankruptcy of the registered owner thereof, and

(ii) prescribing the conditions upon which the transfer, transmission, exchange and redemption of securities registered in the names of infants, minors or other persons not of full capacity to enter into ordinary contracts, may be made,

(*c*) for the issue of securities or making of payments in respect of damaged, lost, stolen or destroyed securities or interest coupons, and of the cheques pertaining thereto and prescribing conditions to such issue or payment,

(*d*) requiring guarantees to be given to the registrar in such manner and by such persons as the regulations may prescribe, before the registrar is authorized to make any entry in the register,

(*e*) authorizing the correction by the registrar, in such circumstances as may be prescribed by the regulations, of errors in the register and otherwise authorizing rectification of the register, and

(*f*) providing for the payment of losses out of the Investors' Indemnity Account.

PART V.

Public Stores.

Stores records.

57. Every department shall maintain adequate records of stores and the appropriate Minister or such other authority as the Governor in Council may direct may make rules and give directions governing the acquisition, receipt, custody, issue and control of such stores.

Revolving fund.

58. (1) Subject to this section, where Parliament has authorized a department to operate a revolving fund for the purpose of acquiring and managing stores or for manufacturing, producing, processing or dealing in stores or materials, and has fixed the amount that may be charged to that revolving fund at any time,

(*a*) payments may be made out of the Consolidated Revenue Fund for these purposes subject to such terms and conditions as the Treasury Board may prescribe, and

(*b*) the Comptroller shall keep an account to which shall be charged

(i) the cost of such of the stores and materials on hand in the department at the time the revolving fund is established as the Treasury Board may prescribe, and

(ii) the payments made under paragraph (*a*).

Credits.

(2) There shall be shown as credits in the account

(*a*) all money received by the Receiver General in respect of operations of the revolving fund, and

(*b*) amounts charged to appropriations as the reimbursement of costs charged to the revolving fund of stores or material issued or work performed in respect of services for which the appropriations were made.

Limit.

(3) A payment made out of the Consolidated Revenue Fund pursuant to subsection one together with the balance of the revolving fund shall not be greater than the amount fixed by Parliament as the amount that may be charged to the revolving fund at any time or such lesser amount as the Treasury Board may prescribe.

(4) For the purposes of this section "balance of the revolving fund" means the aggregate of all payments charged to the revolving fund, less all credits to the revolving fund. "balance of the revolving fund" defined.

(5) At the end of each fiscal year the value of the inventory held and accounts receivable in respect of the operations of a revolving fund shall be determined in accordance with regulations of the Treasury Board, and if such value added to the receipts shown in the revolving fund exceeds the total of expenditures shown in the revolving fund and liabilities in respect of operations of the revolving fund then due and payable, the excess shall be transferred from the revolving fund as revenue, but if the value is less no amount may be credited to the revolving fund to meet the deficiency except with the authority of Parliament. Value of inventories.

59. All accounting transactions with respect to a revolving fund under this Part shall be recorded at cost, but for the purpose of valuing stores or materials on hand at the time the revolving fund is established and of valuing inventories and issues of stores and materials, cost may be determined in accordance with such recognized accounting practices as the appropriate Minister, with the approval of the Treasury Board, may direct. Accounting transactions to be recorded at cost.

60. (1) The appropriate Minister may from time to time, but not less frequently than once in every five years, constitute a board of survey to enquire into the state of the stores under the management of a department. Board of survey.

(2) Where a board of survey constituted under subsection one recommends the deletion from inventory of any obsolete or unserviceable stores or materials or any stores or materials lost or destroyed, the appropriate Minister, with the approval of the Treasury Board, may direct the deletion of all or any part of such stores or materials from the inventory, but the value of stores or materials so deleted shall not be credited to a revolving fund except with the authority of Parliament. Deletion of stores.

(3) A statement in such form as the Treasury Board prescribes of all stores and materials deleted from inventories pursuant to subsection two shall be included annually in the Public Accounts. Report.

61. The Comptroller may examine records, accounts and procedures respecting stores and materials and report thereon to the Minister or the appropriate Minister. Records.

62. For the purposes of this Part, the Treasury Board may by regulation define for any department the expressions "stores," "materials" and "issues". "stores", "materials", "issues" defined.

PART VI.

Public Accounts.

Accounts of Canada.

63. (1) The Minister shall cause accounts to be kept in such a manner as to show,

(*a*) the expenditures made under and commitments chargeable against each appropriation,

(*b*) the revenues of Canada, and

(*c*) the other payments into and out of the Consolidated Revenue Fund.

Assets and liabilities.

(2) Subject to regulations of the Treasury Board, the Minister

(*a*) shall cause accounts to be kept to show such of the assets and direct and contingent liabilities of Canada, and

(*b*) may establish such reserves with respect to the assets and liabilities,

as in his opinion are required to give a true and fair view of the financial position of Canada.

How kept.

(3) The accounts of Canada shall be kept in the currency of Canada.

Submission of Public Accounts to Parliament.

64. (1) An annual report, called the Public Accounts, shall be laid before the House of Commons by the Minister on or before the thirty-first day of December, or if Parliament is then not in session, within fifteen days after the commencement of the next ensuing session.

Contents of Public Accounts.

(2) The Public Accounts shall be in such form as the Minister may direct, and shall include:

(*a*) a report on the financial transactions of the fiscal year;

(*b*) a statement, certified by the Auditor General, of the expenditures and revenues of Canada for the fiscal year;

(*c*) a statement, certified by the Auditor General, of such of the assets and liabilities of Canada as in the opinion of the Minister are required to show the financial position of Canada as at the termination of the fiscal year;

(*d*) the contingent liabilities of Canada; and

(*e*) such other accounts and information as are necessary to show, with respect to the fiscal year, the financial transactions and financial position of Canada, or are required by any Act to be shown in the Public Accounts.

PART VII.

The Auditor General.

Auditor General.

65. (1) The Governor in Council shall by commission under the Great Seal of Canada appoint an officer called the Auditor General of Canada to hold office during good behaviour until he attains the age of sixty-five years, but he is removable by the Governor General on address of the Senate and House of Commons.

Salary.

(2) The Auditor General shall out of the Consolidated Revenue Fund be paid a salary of fifteen thousand dollars per annum.

(3) The provisions of the *Public Service Superannuation Act*, except those relating to tenure of office, apply to the Auditor General.

Officers, etc.

(4) Such officers and employees as are necessary to enable the Auditor General to perform his duties shall be appointed in accordance with the provisions of the *Civil Service Act*.

Acting Auditor General.

(5) The Governor in Council may appoint a person temporarily to perform the duties of the Auditor General during a vacancy in the office of Auditor General.

Access to books, files, etc.

66. (1) Notwithstanding any Act, the Auditor General is entitled to free access at all convenient times to all files, documents and other records relating to the accounts of every department, and he is also entitled to require and receive from members of the public service such information, reports and explanations as he may deem necessary for the proper performance of his duties.

Stationing of officers in other departments.

(2) The Auditor General may station in any department any person employed in his office to enable him more effectively to carry out his duties, and the department shall provide the necessary office accommodation for any such officer so stationed.

Oath of secrecy.

(3) The Auditor General shall require every person employed in his office who is to examine the accounts of a department pursuant to this Act to comply with any security requirements applicable to, and to take any oath of secrecy required to be taken by persons employed in that department.

Suspension.

(4) The Auditor General may suspend from the performance of his duty any person employed in his office.

Accounts relating to Consolidated Revenue Fund.

67. The Auditor General shall examine in such manner as he may deem necessary the accounts relating to the Consolidated Revenue Fund and to public property and shall ascertain whether in his opinion

(*a*) the accounts have been faithfully and properly kept,

(*b*) all public money has been fully accounted for, and the rules and procedures applied are sufficient to secure an effective check on the assessment, collection and proper allocation of the revenue,

(*c*) money has been expended for the purposes for which it was appropriated by Parliament, and the expenditures have been made as authorized, and

(*d*) essential records are maintained and the rules and procedures applied are sufficient to safeguard and control public property.

Registrar's accounts.

68. The Auditor General shall

(*a*) make such examination of the accounts and records of each registrar as he deems necessary, and such other examinations of a registrar's transactions as the Minister may require, and

Destruction of cancelled securities.

(*b*) when and to the extent required by the Minister, participate in the destruction of any redeemed or cancelled securities or unissued reserves of securities, authorized to be destroyed under this Act,

and may, by arrangement with the registrar, maintain custody and control, jointly with the registrar, of cancelled and unissued securities.

Certificates.

69. The Auditor General shall examine and certify in accordance with the outcome of his examinations the several statements required by section sixty-four to be included in the Public Accounts, and any other statement that the Minister may present for audit certificate.

Report to House of Commons.

70. (1) The Auditor General shall report annually to the House of Commons the results of his examinations and shall call attention to every case in which he has observed that

(*a*) any officer or employee has wilfully or negligently omitted to collect or receive any money belonging to Canada,

(*b*) any public money was not duly accounted for and paid into the Consolidated Revenue Fund,

(*c*) any appropriation was exceeded or was applied to a purpose or in a manner not authorized by Parliament,

(*d*) an expenditure was not authorized or was not properly vouched or certified,

(*e*) there has been a deficiency or loss through the fraud, default or mistake of any person, or

(*f*) a special warrant authorized the payment of any money,

and to any other case that the Auditor General considers should be brought to the notice of the House of Commons.

When report to be tabled.

(2) The report of the Auditor General shall be laid before the House of Commons by the Minister on or before the thirty-first day of December, or, if Parliament is then not in session, within fifteen days after the commencement of the next ensuing session and if the Minister does not, within the time prescribed by this section, present the report to the House of Commons, the Auditor General shall transmit the report to the Speaker for tabling in the House of Commons.

Inquiry and report.

71. The Auditor General shall, whenever the Governor in Council, the Treasury Board or the Minister directs, inquire into and report on any matter relating to the financial affairs of Canada or to public property and on any person or organization that has received financial aid from the Government of Canada or in respect of which financial aid from the Government of Canada is sought.

Reports to be made through Minister.

72. Any report of the Auditor General to the Governor in Council or the Treasury Board shall be made through the Minister.

Improper retention of public money.

73. Whenever it appears to the Auditor General that any public money has been improperly retained by any person, he shall forthwith report the circumstances of such cases to the Minister.

Inquiries.

74. The Auditor General may examine any person on oath on any matter pertaining to any account subject to audit by him and for the purposes of any such examination the Auditor General may exercise all the powers of a commissioner under Part I of the *Inquiries Act*.

Audit of office of Auditor General.

75. An officer of the public service nominated by the Treasury Board shall examine and certify to the House of Commons in accordance with the outcome of his examinations the receipts and disbursements of the office of the Auditor General.

PART VIII

Crown Corporations.

76. (1) In this Part

"agency corporation". (*a*) "agency corporation" means a Crown corporation named in Schedule C;

"auditor". (*b*) "auditor" means, in relation to a corporation, the person authorized by Parliament to audit the accounts and financial transactions of the corporation;

"Crown corporation". (*c*) "Crown corporation" means a corporation that is ultimately accountable, through a Minister, to Parliament for the conduct of its affairs, and includes the corporations named in Schedule B, Schedule C and Schedule D;

"departmental corporation". (*d*) "departmental corporation" means a Crown corporation named in Schedule B; and

"proprietary corporation". (*e*) "proprietary corporation" means a Crown corporation named in Schedule D.

Deletions from Schedule. (2) The Governor in Council may by order delete the name of any corporation from Schedule B, Schedule C or Schedule D and shall thereupon add the name of that corporation to the appropriate schedule in accordance with subsection three.

Additions to Schedule. (3) The Governor in Council may by order

(*a*) add to Schedule B any Crown corporation that is a servant or agent of Her Majesty in right of Canada and is responsible for administrative, supervisory or regulatory services of a governmental nature;

(*b*) add to Schedule C any Crown corporation that is an agent of Her Majesty in right of Canada and is responsible for the management of trading or service operations on a quasi-commercial basis, or for the management of procurement, construction or disposal activities on behalf of Her Majesty in right of Canada; and

(*c*) add to Schedule D any Crown corporation that

(i) is responsible for the management of lending or financial operations, or for the management of commercial and industrial operations involving the production of or dealing in goods and the supplying of services to the public, and

(ii) is ordinarily required to conduct its operations without appropriations.

77. (1) Where, in respect of a Crown corporation G. in C. to designate auditor.

(*a*) no provision is made in any Act for the appointment of an auditor to audit the accounts and financial transactions of the corporation, or

(*b*) the auditor is to be appointed pursuant to the *Companies Act*,

the Governor in Council shall designate a person to audit the accounts and financial transactions of the Corporation.

(2) Notwithstanding any other Act, the Auditor General is eligible to be appointed the auditor, or a joint auditor, of a Crown corporation. Auditor General eligible.

78. (1) Sections seventy-nine to eighty-eight, both inclusive, apply to agency corporations and proprietary corporations, but in the event of any inconsistency between the provisions thereof and the provisions of any other Act, the provisions of such other Act prevail. Application.

(2) This Part does not apply to departmental corporations except as provided in section seventy-six. Exception.

79. The financial year of a corporation is the calendar year, unless the Governor in Council otherwise directs. Financial year.

80. (1) Each agency corporation shall annually submit to the appropriate Minister an operating budget for the next following financial year of the corporation for the approval of the appropriate Minister and the Minister of Finance. Budgets.

(2) For each corporation the appropriate Minister shall annually lay before Parliament the capital budget for its financial year approved by the Governor in Council on the recommendation of the appropriate Minister and the Minister of Finance. Idem.

(3) The Treasury Board, on the joint recommendation of the Minister of Finance and the appropriate Minister, may by regulation prescribe the form in which budgets required by this section shall be prepared. Form.

81. (1) A corporation may, with the approval of the Minister of Finance, maintain in its own name one or more accounts in the Bank of Canada or in such bank in Canada or financial institution outside of Canada as the Minister of Finance may approve. Bank accounts.

(2) The Minister of Finance may, with the concurrence of the appropriate Minister, direct a corporation to pay all or any part of the money of the corporation to the Receiver General to be placed to the credit Receiver General account.

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of a special account in the Consolidated Revenue Fund in the name of the corporation, and the Minister of Finance may pay out, for the purposes of the corporation, or repay to the corporation, all or any part of the money in the special account.

Payment over of surplus money.

(3) Notwithstanding the other provisions of this section, where the appropriate Minister and the Minister of Finance, with the approval of the Governor in Council, so direct, a corporation shall pay to the Receiver General so much of the money administered by it as the appropriate Minister and the Minister of Finance consider to be in excess of the amount required for the purposes of the corporation, and any money so paid may be applied towards the discharge of any obligation of the corporation to Her Majesty, or may be applied as revenues of Canada.

Loans to corporations.

82. (1) At the request of the appropriate Minister, and subject to the approval of the Governor in Council, the Minister of Finance may from time to time lend money to a corporation for working capital out of money in the Consolidated Revenue Fund.

Limit.

(2) The aggregate amount of loans outstanding made to any one corporation under this section shall not at any time exceed five hundred thousand dollars.

Terms.

(3) A loan under this section is subject to such terms and conditions as the Governor in Council approves and is repayable within a period not exceeding twelve months from the day on which the loan was made.

Report to Parliament.

(4) A report of every loan to a corporation under this section shall be laid by the Minister of Finance before Parliament within fifteen days after it is made or, if Parliament is not then in session, within fifteen days after the commencement of the next ensuing session.

Awarding of contracts.

83. The Governor in Council may make regulations with respect to the conditions upon which an agency corporation may undertake contractual commitments.

Reserves.

84. Subject to any order of the Governor in Council made on the joint recommendation of the Minister of Finance and the appropriate Minister, a corporation may make provision for reserves for depreciation of assets, for uncollectable accounts and for other purposes.

Books.

85. (1) A corporation shall keep proper books of account and proper records in relation thereto.

Statement of accounts.

(2) Subject to such directions as to form as the Minister of Finance and the appropriate Minister may jointly give, a corporation shall prepare in respect of each financial year statements of accounts which shall include

(*a*) a balance sheet, a statement of income and expense and a statement of surplus, containing such information, as in the case of a company incorporated under the *Companies Act*, is required to be laid before the company by the directors at an annual meeting, and

(*b*) such other information in respect of the financial affairs of the corporation as the appropriate Minister or the Minister of Finance may require.

Annual report.

(3) A corporation shall, as soon as possible, but within three months after the termination of each financial year submit an annual report to the appropriate Minister in such form as he may prescribe, which shall include the statement of accounts specified in subsection two, and the appropriate Minister shall lay the report before Parliament within fifteen days after he receives it or, if Parliament is not then in session, within fifteen days after the commencement of the next ensuing session.

Reports to Minister.

(4) A corporation shall make to the appropriate Minister such reports of its financial affairs as he requires.

Access to books, etc.

86. The auditor is entitled to have access at all convenient times to all records, documents, books, accounts and vouchers of a corporation, and is entitled to require from the directors and officers of the corporation such information and explanations as he deems necessary.

Auditor's report.

87. (1) The auditor shall report annually to the appropriate Minister the result of his examination of the accounts and financial statements of a corporation, and the report shall state whether in his opinion

(*a*) proper books of account have been kept by the corporation;

(*b*) the financial statements of the corporation

(i) were prepared on a basis consistent with that of the preceding year and are in agreement with the books of account,

(ii) in the case of the balance sheet, give a true and fair view of the state of the corporation's affairs as at the end of the financial year, and

(iii) in the case of the statement of income and expense, give a true and fair view of the income and expense of the corporation for the financial year; and

(c) the transactions of the corporation that have come under his notice have been within the powers of the corporation under this Act and any other Act applicable to the corporation;

and the auditor shall call attention to any other matter falling within the scope of his examination that in his opinion should be brought to the attention of Parliament.

Other reports.

(2) The auditor shall from time to time make to the corporation or to the appropriate Minister such other reports as he may deem necessary or as the appropriate Minister may require.

Annual report.

(3) The annual report of the auditor shall be included in the annual report of the corporation.

(4) Notwithstanding section seventy-eight, this section operates in lieu of section one hundred and twenty-four of the *Companies Act*.

Report through Minister.

88. In any case where the auditor is of the opinion that any matter in respect of a corporation should be brought to the attention of the Governor in Council, the Treasury Board or the Minister of Finance, such report shall be made forthwith through the appropriate Minister.

PART IX.

Civil Liability and Offences.

Notice to persons failing to pay over public money.

89. (1) Whenever the Minister has reason to believe that any person

(a) has received money for Her Majesty and has not duly paid it over,

(b) has received money for which he is accountable to Her Majesty and has not duly accounted for it, or

(c) has in his hands any public money applicable to any purpose and has not duly applied it,

the Minister may cause a notice to be served on such person, or on his representative in case of his death, requiring him within such time from the service of the notice as may be named therein, duly to pay over, account for, or apply such money, as the case may be, and to transmit to the Minister proper vouchers that he has done so.

(2) Where a person has failed to comply with a notice served on him under subsection one within the time stated therein the Minister shall state an account between such person and Her Majesty, showing the amount of the money not duly paid over, accounted for or applied, as the case may be, and, in the discretion of the Minister, charging interest on the whole or any part thereof at the rate of five per cent per annum from such date as the Minister may determine, and in any proceedings for the recovery of such money a copy of the account stated by the Minister, certified by him, shall be *prima facie* evidence that the amount stated therein, together with interest, is due and payable to Her Majesty, without proof of the signature of the Minister or his official character, and without further proof thereof, and such amount and interest may be recovered as a debt due to Her Majesty.

Proceedings where notice not complied with.

90. Where it appears

Evidence.

(*a*) by the books or accounts kept by or in the office of any person employed in the collection or management of the revenue,

(*b*) in any accounting by such person, or

(*c*) by his written acknowledgment or confession,

that such person has, by virtue of his office or employment, received money belonging to Her Majesty and has refused or neglected to pay over such money to the proper persons at the proper times, an affidavit deposing to such facts, taken by any person having knowledge thereof, shall, in any proceedings for the recovery of such money, be received in evidence and shall be *prima facie* proof of the facts stated therein.

91. Where by reason of any malfeasance, wilful neglect of duty or gross negligence by any person employed in collecting or receiving any public money, any sum of money is lost to Her Majesty, such person is accountable for such sum as if he had collected and received it and it may be recovered from him as if he had collected and received it.

Liability for loss.

92. Every officer or person acting in any office or employment connected with the collection, management or disbursement of public money who

Offences.

(*a*) receives any compensation or reward for the performance of any official duty, except as by law prescribed;

(*b*) conspires or colludes with any other person to defraud Her Majesty, or makes opportunity for any person to defraud Her Majesty;

(*c*) designedly permits any violation of the law by any other person;

(*d*) wilfully makes or signs any false entry in any book, or wilfully makes or signs any false certificate or return in any case in which it is his duty to make an entry, certificate or return;

(*e*) having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against Her Majesty, under any revenue law of Canada, fails to report, in writing, such knowledge or information to his superior officer; or

(*f*) demands or accepts or attempts to collect, directly or indirectly, as payment or gift or otherwise, any sum of money, or other thing of value, for the compromise, adjustment or settlement of any charge or complaint for any violation or alleged violation of law,

is guilty of an indictable offence, and is liable on conviction to a fine not exceeding five hundred dollars, and to imprisonment for any term not exceeding five years.

Bribes.

93. Every person who

(*a*) promises, offers or gives any bribe to any officer or any person acting in any office or employment connected with the collection, management or disbursement of public money, with intent

(i) to influence his decision or action on any question or matter that is then pending, or may, by law, be brought before him in his official capacity, or

(ii) to influence such officer or person to commit, or aid or abet in committing any fraud on the revenue, or to connive at, collude in, or allow or permit any opportunity for the commission of any such fraud, or

(*b*) accepts or receives any such bribe,

is guilty of an indictable offence, and is liable on conviction to a fine not exceeding three times the amount so offered or accepted, and to imprisonment for any term not exceeding five years.

Books, etc. property of Her Majesty.

94. All books, papers, accounts and documents kept or used by, or received or taken into the possession of any person who is or has been employed in the collection or management of the revenue or in accounting for the revenue, by virtue of that employment, shall be deemed to be chattels belonging to Her Majesty; and all money or valuable securities received or taken into the possession of any such officer or person by virtue of his employment shall be deemed to be money and valuable securities belonging to Her Majesty.

Part X.

Miscellaneous.

Debts due to Crown.

95. (1) Where, in the opinion of the Minister of Justice, any person is indebted to Her Majesty in right of Canada in any specific sum of money, the Treasury Board may authorize the Minister of Finance to retain by way of deduction or set-off the amount of any such indebtedness out of any sum of money that may be due or payable by Her Majesty in right of Canada to such person.

Provincial taxes.

(2) Where, in the opinion of the Minister of Justice, any person is indebted in any specific sum of money on account of taxes payable to any province, and an agreement exists between Canada and the province whereby Canada is authorized to collect the tax on behalf of the province, the Treasury Board may authorize the Minister of Finance to retain by way of deduction or set-off, out of any sum of money that may be due or payable by Her Majesty in right of Canada to such person, the amount of such indebtedness, but the amount so retained shall not exceed the amount that might under the laws of the province be seized or attached under execution or garnishee proceedings.

Payments in respect of which Canada has contributed.

(3) Where, in the opinion of the Minister,

(*a*) any person is indebted to a province in any specific sum of money by reason of his having received from the province a payment, in respect of which Canada has contributed under the provisions of any Act, to which he was not entitled, and

(*b*) the province has made reasonable efforts to effect recovery of the amount of such indebtedness,

the Treasury Board may authorize the Minister to retain by way of deduction or set-off the amount of such indebtedness out of any sum of money that may be due and payable by Her Majesty in right of Canada to such person, and the amount so deducted less the portion thereof that in the opinion of the Minister is proportionate to the contribution in respect thereof made by Canada, may be paid to the province out of the Consolidated Revenue Fund.

Tabling of information already contained in Public Accounts.

96. Whenever it appears to the Governor in Council that any account, statement, return or document required by any Act of Parliament or otherwise to be laid before one or both Houses of Parliament contains the same information as or less information than is contained in the Public Accounts, the Governor in

Council may direct that the account, statement, return or other document be discontinued, and thereafter it need not be prepared or laid before either House of Parliament.

Transfers, etc., of property.

97. Subject to any other Act of Parliament, no transfer, lease or loan of property owned by Her Majesty in right of Canada shall be made to any person, except in accordance with regulations or on the direction of the Governor in Council.

Public Officers Guarantee Account.

98. (1) There shall be established in the Consolidated Revenue Fund a special account to be known as the Public Officers Guarantee Account to which shall be transferred or credited, in accordance with the regulations,

(*a*) the balance of the Government Officers Guarantee Fund,

(*b*) amounts paid by departments by way of premiums, and

(*c*) amounts recovered by Her Majesty in respect of payments out of the said Account or the Government Officers Guarantee Fund,

and payment may be made out of the said Account, in accordance with the regulations, by way of indemnity for losses suffered by Her Majesty or others by reason of defalcations or other fraudulent acts or omissions of public officers.

Regulations.

(2) The Treasury Board may make regulations

(*a*) prescribing the conditions upon which payments may be made out of the Public Officers Guarantee Account,

(*b*) requiring departments to deposit amounts to the credit of the said Account, and

(*c*) governing the operation of the said Account by the Minister.

Reporting.

(3) Every payment out of the Public Officers Guarantee Account and the amount of every loss suffered by Her Majesty by reason of defalcations or other fraudulent acts or omissions of a public officer, together with a statement of the circumstances, shall be reported annually in the Public Accounts.

No charge for certain cheques.

99. No bank shall make a charge for cashing a cheque or other instrument drawn on the Receiver General or on his account in the Bank of Canada or any other bank, or for cashing any other instrument issued as authority for the payment of money out of

the Consolidated Revenue Fund, or in respect of any cheque or other instrument drawn in favour of the Receiver General, the Government of Canada or any department thereof or any public officer in his capacity as such, and tendered for deposit to the credit of the Receiver General.

Regulations.

100. The Governor in Council may make regulations for carrying the purposes and provisions of this Act into effect.

PART XI.

Repeal.

Repeal.

101. (1) The enactments set out in the first column of Schedule E are repealed to the extent specified in the third column of that Schedule.

Department of Transport stores.

(2) Upon the coming into force of this Act, Parliament shall be deemed to have authorized the Department of Transport to operate a revolving fund for the purpose of acquiring and managing stores and to have fixed the amount of four million dollars as the amount that may be charged to that fund at any one time, against which shall be charged the value of stores then on hand.

Coming into Force

Coming into force.

102. This Act or any Part thereof shall come into force on a day or days to be fixed by proclamation of the Governor in Council.

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SCHEDULE A.

Department of Agriculture.
Department of Citizenship and Immigration.
Department of Defence Production.
Department of External Affairs.
Department of Finance.
Department of Fisheries.
Department of Insurance.
Department of Justice.
Department of Labour.
Department of Mines and Technical Surveys.
Department of National Defence.
Department of National Health and Welfare.
Department of National Revenue.
Department of Northern Affairs and National Resources.
Post Office Department.
Department of Public Works.
Department of Public Printing and Stationery.
Department of the Secretary of State of Canada.
Department of Trade and Commerce.
Department of Transport.
Department of Veterans Affairs.

SCHEDULE B.

Agricultural Prices Support Board.
Atomic Energy Control Board.
Canadian Maritime Commission.
Director of Soldier Settlement.
The Director, The Veterans' Land Act.
Dominion Coal Board.
Fisheries Prices Support Board.
National Gallery of Canada.
National Research Council.
Unemployment Insurance Commission.

SCHEDULE C.

Atomic Energy of Canada Limited.
Canadian Arsenals Limited.
Canadian Commercial Corporation.
Canadian Patents and Development Limited.
Commodity Prices Stabilization Corporation Ltd.
Crown Assets Disposal Corporation.
Defence Construction (1951) Limited.
Federal District Commission.
National Battlefields Commission.
National Harbours Board.
Park Steamship Company Limited.

SCHEDULE D.

Canadian Broadcasting Corporation.
Canadian Farm Loan Board.
Canadian National (West Indies) Steamships, Limited.
Canadian Overseas Telecommunication Corporation.
Central Mortgage and Housing Corporation.
Eldorado Aviation Limited.
Eldorado Mining and Refining Limited.
Export Credits Insurance Corporation.
National Railways, as defined in the *Canadian National-Canadian Pacific Act, 1933.*
Northern Transportation Company Limited.
Northwest Territories Power Commission.
Polymer Corporation Limited.
Trans-Canada Air Lines.

SCHEDULE E.

ENACTMENTS REPEALED.

Title.	*Citation.*	*Extent of Repeal.*
The Consolidated Revenue and Audit Act, 1931.....	1931, c. 27.....	the whole.
Department of Finance and Treasury Board Act.....	R.S.C. 1927, c. 71	sections 1 to 13.
The Department of Transport Stores Act.....	1937, c. 28.....	the whole.
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